

C-8353

SUPREME COURT OF TEXAS CASES

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. U. KIRBY,  
WILLIAM, ET AL. (3RD DISTRICT)

883  
1988-89

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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. V. KIRBY,  
WILLIAM, ET AL. (3RD DISTRICT)

003  
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mental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W. 2d 449 (Tex. Civ. App. -- Texarkana 1930, error ref'd). And "the Legislature has authority to enlarge or consolidate school districts in such a manner as it deems fit." North Common School District v. Live Oak County Board, 199 S.W. 3d 764 (Tex. 1946).

8. The Texas Supreme Court in applying Article 1, Section 3 of the Texas Constitution does not consider itself bound by decisions of the United States Supreme Court under the Fourteenth Amendment and the Texas courts are "free to accept or reject federal holdings" in formulating a body of law under the State's own Constitution. Whitworth v. Bynum, 699 S.W. 2d at 196.

9. The Court must consider whether a statute is overbroad, over-inclusive or harsh when considering its constitutionality under the rational basis standard. Sullivan v. University Scholastic League, 616 S.W. 2d 170 (Tex. 1981); Whitworth v. Bynum, 699 S.W. 2d 194 (Tex. 1985)

10. In Plyler v. Doe, 457 U.S. 202 (1982), the Supreme Court struck down Sec. 21.031 of the Texas Education Code which effectively barred undocumented children from Texas schools. While noting that education was not a fundamental interest under the Fourteenth Amendment, the Court held that a confluence of factors, including the implication of educational interest, compelled the state to show it had a "substantial" interest in its scheme. Id. at 231. Among the factors weighed in raising the level of justification of the state was the existence of

innocent children who were burdened, as well as a nexus between those children and traditionally suspect classes, alienage and race.

B. The Defendants' Obligations

The State must demonstrate that its system of school finance is rationally related to a legitimate state purpose.

C. Facts Demonstrating That the Texas System of Funding Public Education Does Have an Adverse Impact and Impinges Upon the Educational Opportunities Afforded Children

The Court has listed its findings on this issues in Section II, supra.

D. Findings of Fact Demonstrating that the Existing System of Funding Public Education is Not Rationally Related to the Purposes Expressed By Article 7, Section 1 of the Texas Constitution and/or Section 16.001 of the Texas Education Code

The Court has listed its findings on this issue in Section II, supra and Section IV infra.

E. Facts Demonstrating That the Adverse Impact Found to Exist as a Result of the State System of Public School Finance is not Justified by Local Control or Preservation of Community of Interest

The Court has listed its findings on this issue in Section II, supra and Section IV, infra.

F. Legal Conclusion

The system of public school finance in Texas creates and enforces classifications which have an adverse impact on

plaintiffs. The system is not rationally related to legitimate state purposes and violates Article I §§3 and 3(a) of the Texas Constitution.

IV.  
THE TEXAS SCHOOL FINANCE SYSTEM  
IS NOT AN EFFICIENT SYSTEM

Plaintiffs and Plaintiff-Intervenors further contend that the Texas system for funding public education violates Article VII, Section 1 of the Texas Constitution.

A. Legal Standards

1. The Texas Constitution provides in Article VII, Section 1:  

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.
2. The word efficient as defined in Webster's New Collegiate Dictionary means "productive without waste."
3. The Oxford American Dictionary defines efficient as "acting effectively; producing results with little waste of effort."
4. The West Virginia Supreme Court has defined a thorough and efficient education as one that:

develops, as best the state of education expertise allows, the minds, bodies, and social morality of its charges to prepare them for useful and happy occupation, recreation and citizenship, and does so economically.

Legal recognized elements in this definition are development in every child to his or her capacity of (1) literacy; (2) ability to add, subtract, multiply and divide numbers; (3) knowledge of government to the extent that the child will be equipped as a citizen to make informed choices among persons and issues that affect his own governance; (4) self-knowledge and knowledge of his or her total environment to allow the child to intelligently choose life work -- to know his or her options; (5) work-training and advanced academic training as the child may intelligently choose; (6) recreational pursuits; (7) interests in all creative arts, such as music, theatre, literature, and the visual arts; (8) social ethics, both behavioral and abstract, to facilitate compatibility with others in this society.

Implicit are supportive services: (1) good physical facilities, instructional materials and personnel; (2) careful state and local supervision to prevent waste and to monitor pupil, teacher and administrative competency.

Pauley v. Kelly, 255 S.E. 2d 859 (W.Va. 1979).

5. The West Virginia Education Article, W.VA. CONST. Art. XII §1 states:

The legislature shall provide, by general law, for a thorough and efficient system of free schools.

Based on this Article, the West Virginia Supreme Court held:

the Thorough and Efficient Clause requires the development of certain high quality educational standards, and it is in part by these quality standards that the existing educational system must be tested.

Pauley v. Kelly, 225 S.E. 2d 859, 878 (W.Va. 1979).

6. Based upon their respective "thorough and efficient" clauses, the Supreme Courts of Arkansas, Dupree v. Alma School

District No. 30, 651 S.W. 2d 90 (1983); New Jersey, Robinson v. Cahill, 303 A.2d 272 (N.J. 1973); and Wyoming, Washokie County School District No. 1 v. Herschler, 606 P.2d 310 (Wyoming 1980) found their respective school finance systems unconstitutional.

B. The State's Requirement in View of the Law

Article VII, Section 1 of the Texas Constitution requires the State to maintain a cost-efficient/non-wasteful system of public free schools.

C. Facts Demonstrating That the Texas School Finance System Does Not Meet Its Obligations Under TEX. CONST. Art. 7, §1

The Court has made its findings on this issue in Section II, supra and in addition finds as follows:

1. The school district configurations in Texas, harboring as they do vast disparities in wealth among the districts, are neither efficient nor equitable and result in significantly different educational opportunities for children and widely varying tax burdens for taxpayers. (Hooker, Walker, Foster)

2. There is no underlying rationale in the district boundaries of many school districts in Texas and there are many districts that are pure tax havens. (Hooker, Walker, Foster, Moak)

3. There are tax haven districts with very few students that shelter substantial property wealth that could and should be used as a tax base to support public education. (Foster, Walker, PX 1)



4. The system is not financially efficient. (Foster, Hooker)

5. If district organizational lines were reorganized the financial efficiency of the system could be greatly increased. (Moak, Hooker)

6. Those individuals of political influence who could impact the political process by and large reside in districts of above average wealth. (Ward, Hooker, Foster)

7. The advantage of wealth and influence are enjoyed by the wealthy districts while the poor districts must survive with greatly limited resources and little or no means to improve their situation. (Ward, Boyd, Sawyer, Sybert, Hooker)

8. There are school districts operating within the State of Texas with full accreditation privileges and recognized by the Texas Education Agency and the State of Texas for all purposes with as few as four students. (Bergin)

9. State monies are channeled to "tax haven districts" either via the current funding formula or through the manner in which the State chooses to disburse monies from the Available School Fund. (Hooker, Foster, Collins, Moak)

10. The State of Texas has allowed many small districts to exist which because of diseconomies of scale are inefficient. Many of these small districts are also property poor. (Kirby, Hooker, Moak, PX 239)

11. Regardless of size some districts are inefficient because of lack of wealth which prevents them from providing a fully adequate educational program. (Hooker, Boyd, PX 239)



12. The existing funding system creates "budget balanced districts" whose total property wealth is not available for the funding of public education; at average tax rates this loss to public education exceeds \$200,000,000 annually. (Foster, PX 110)

13. Geographic anomalies exist in the pattern of district lines that result in unnecessary transportation costs and other inefficiencies; the Governor's committee, appointed by Governor Connally, in 1965, recommended that for purposes of efficiency and equity in distribution of funds, the legislature should pursue consolidation of inefficient districts. No legislative action has ever been taken on this recommendation. (Hooker, Moak, PX 239)

14. ~~If one takes into account district lines no one could argue that the system was financially efficient and~~ If district organizational lines were reorganized financial efficiency of the system could be greatly increased. (Moak, PX 239)

15. By taxing from larger areas of the state, the state could create and use for taxing purposes areas of similar property values for students. This would greatly reduce the existing large variations in expenditures per pupil, tax rates, inefficiency of many small districts and loss to budget-balance of other very wealthy districts. (Hooker, Moak, Ward)

#### D. Legal Conclusion

The system of public school finance in Texas is not an efficient system and violates the Legislature's duty required by Art. 7, §1 of the Texas Constitution.

V.  
ATTORNEYS' FEES CLAIMS

A. Legal Standards

1. In proceedings under the Uniform Declaratory Judgment Act, TEX. CIV. PRAC. & REM. CODE §37.001, et seq., the Court may award costs and reasonable and necessary attorney's fees.

2. In actions under TEX. CIV. PRAC. & REM. CODE §106.001, the Court may award the prevailing party reasonable attorneys fees as part of its costs.

B. Requirements In View of the Law

If Plaintiffs and Plaintiff-Intervenors are prevailing parties in this litigation, they are entitled to reasonable attorneys fees and costs against Defendants and Defendant-Intervenors. However, these attorneys fees can be barred by sovereign immunity or denied under the Court's discretion.

C. Facts Supporting Plaintiffs and Plaintiff-Intervenors Claims For Attorneys Fees

1. Plaintiffs and Plaintiff-Intervenors are prevailing parties in this litigation.

2. This is a case of supreme public importance.

3. Defendant-Intervenors have adopted the State's position in this litigation.

4. The reasonable and prevailing hourly rate for Plaintiffs and Plaintiff-Intervenors attorneys Albert Kauffman, Richard

Gray, David Richards, Peter Roos and Roger Rice is \$150 per hour.

The reasonable rate for the other attorneys is the litigation in \$120 per hour. *all of the "compensable hours" mentioned hereafter are found to be reasonable and necessary.*

*all right*  
5. Albert Kauffman expended 2,607.4 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$391,110.00.

6. Richard Gray expended 729.1 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$109,365.00.

7. David Richards expended 484.8 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$72,720.00.

8. Peter Roos expended 333.8 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$50,070.00.

9. Roger Rice expended 508.4 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$76,260.00.

10. Norma Cantu expended 520.7 compensable hours in this litigation for which ~~she is entitled to a fee of~~ *a reasonable* ~~is~~ \$62,484.00.

11. Camilo Perez expended 436 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$52,320.00.

12. Rer ta Browning expended 271.1 compensable hours in this litigation for which ~~she is entitled to a fee of~~ *a reasonable* ~~is~~ \$20,925.50.

13. Steve Martin expended 513.3 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$61,596.00.

14. Jose Garza expended 45 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$5,400.00.

15. Jose Roberto Juarez expended 60.5 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$7,260.00.

16. Ken Shepherdson expended 12.85 compensable hours in this litigation for which ~~he is entitled to a fee of~~ *a reasonable* ~~is~~ \$1,542.00.

17. Phil Durst expended 13.0 <sup>compensable hours</sup> in this litigation for which ~~he is entitled to a fee of~~ <sup>a reasonable fee</sup> \$1,560.00.

18. Mitch Green expended 27.5 <sup>compensable hours</sup> in this litigation for which ~~he is entitled to a fee of~~ <sup>a reasonable fee</sup> \$3,300.00.

19. A reasonable rate for paralegal costs in this litigation is \$25 per hour. MALDEF expended 4,333.50 of ~~unbillable~~ <sup>a</sup> compensable paralegal time on this litigation for which ~~it is~~ <sup>it is</sup> ~~entitled to a fee of~~ <sup>reasonable fee</sup> \$108,337.50.

20. Richard Gray's law firm expended 315.1 hours of ~~unbillable~~ <sup>a reasonable</sup> paralegal - law clerk time for which ~~it is entitled to a fee of~~ <sup>it is</sup> \$7,877.50.

21. MALDEF ~~is entitled to reimbursement for~~ <sup>reasonable & necessary</sup> expenses (exclusive of Court costs) ~~of~~ <sup>are</sup> \$62,760.96.

22. Attorney Gray ~~is entitled to reimbursement for~~ <sup>reasonable & necessary</sup> expenses (exclusive of Court costs) ~~of~~ <sup>are</sup> \$26,284.34.

23. Attorney Rice ~~is entitled to reimbursement for~~ <sup>reasonable & necessary</sup> expenses (exclusive of Court costs) ~~of~~ <sup>are</sup> \$13,642.00.

24. Attorney Browning ~~is entitled to reimbursement for~~ <sup>reasonable & necessary</sup> expenses (exclusive of Court costs) ~~of~~ <sup>are</sup> \$390.83.

#### D. Legal Conclusions

1. An award of attorneys fees to Plaintiffs and Plaintiff-Intervenors against both the Defendants and the Defendant-Intervenors is barred by the doctrine of sovereign immunity.

2. In addition, the Court holds that an award of attorneys fees against Defendant-Intervenors would be neither equitable nor

just under the terms of the Declaratory Judgment Act, TEX. CIV. PRAC. & REM. Code §37.009, and that even if Plaintiffs had prevailed under TEX. CIV. PRAC. & REM. Code §§106.001-003, the Court would decline to exercise its discretion to award fees against Defendant-Intervenors under TEX. CIV. PRAC. & REM. Code §106.002.

3. Were it not for the doctrine of sovereign immunity the Court would enter Judgement against Defendants for Plaintiffs and Plaintiff-Intervenors' attorneys fees and costs.

## VI. REMEDY

### A. Declaratory Judgment

Plaintiffs and Plaintiff-Intervenors are entitled to a Declaratory Judgment that the Texas School Financing System (Texas Education Code §§16.01, et seq., implemented in conjunction with school district boundaries that contain unequal taxable property wealth for the financing of public education) violates the Texas Constitution, Art. 1 §3 and Art. 7 §1; as provided for in Tex. Civ. Prac. & Rem.. Code §§37.001 et seq.

### B. Injunctive Relief

1. Plaintiffs and Plaintiff-Intervenors will suffer irreparable harm if Defendants are not enjoined from continuing to enforce the present Texas School Financing System (Texas Education Code §16.01 et seq., implemented in conjunction with local school district boundaries that contain unequal taxable property wealth for the financing of public education).

2. Plaintiff and Plaintiff-Intervenors have an inadequate remedy at law, making injunctive relief appropriate.

3. The Court has balanced the equities, considering the importance of education and the constitutional rights protected by this Court's Judgment and the interests of Defendants and finds that the balance of equities favors the granting and staying of injunctive relief as ordered by the Court in its June 1, 1987 Judgment.

4. The school children of Texas who do not receive an equal access to educational funds are irreparably harmed because the school districts in which they reside do not have the constitutionally guaranteed choice or ability to provide educational services and programs available to students of wealthier districts. The denial of equal educational opportunities under the present system results in a harm to school children that would be extremely difficult to calculate and allocate under the traditional law of money damages. Alternatives to an injunction could result in a multiplicity of lawsuits and unacceptable delay, all to the permanent and irreparable detriment of the educational advancement of hundreds of thousands of school children in Texas.

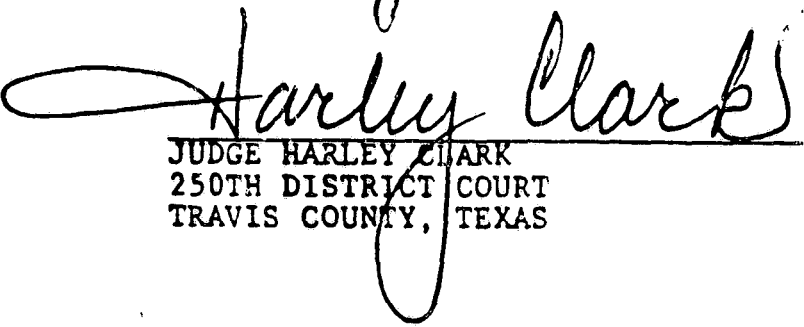
5. The Court orders an injunction under Tex. Civ. Prac. & Remedies Code §65.001 et seq., Tex. Gov. Code §24.011 and the general equity powers of the Court, as expressed in this Court's June 1, 1987 Judgment.

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VII.  
CONCLUSION

The Texas system of public school financing violates the Texas Constitution, Art. 1 §3, Art. 1 §3a, and Art. 7 §1. Plaintiffs and Plaintiff-Intervenors are entitled to declaratory and injunctive relief.

FILED AND ENTERED this 27<sup>th</sup> day of August, 1987.

  
JUDGE HARLEY CLARK  
250TH DISTRICT COURT  
TRAVIS COUNTY, TEXAS



FEB 10 1989

NO. \_\_\_\_\_

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MARY M. WAKEFIELD, Clerk

By \_\_\_\_\_ Deputy

IN THE  
SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

Respondents

PETITIONER-INTERVENORS'

APPLICATION FOR WRIT OF ERROR

DAVID R. RICHARDS 16846000  
BANKS TARVER 19656950  
PHILIP DURST 06287850  
Richards, Wiseman & Durst  
600 West 7th Street  
Austin, Texas 78701  
(512) 479-5017

RICHARD E. GRAY, III  
Gray & Becker  
323 Congress Avenue, Suite 300  
Austin, Texas 78701  
(512) 482-0061

ATTORNEYS FOR PETITIONER-  
INTERVENORS ALVARADO INDEPENDENT  
SCHOOL DISTRICT, ET AL.

No. \_\_\_\_\_

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IN THE  
SUPREME COURT OF TEXAS

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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,  
Petitioners

V.

WILLIAM KIRBY, ET AL.,  
Respondents

---

PETITIONER-INTERVENORS'  
APPLICATION FOR WRIT OF ERROR

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TO THE SUPREME COURT OF TEXAS:

Petitioners, Alvarado Independent School District, et al., file this Application for Writ of Error. Alvarado Independent School District, et al., were appellees in the court of appeals and plaintiff-intervenors in the 250th District Court of Travis County (Judge Harley Clark presiding). Petitioners, Edgewood Independent School District, et al., were appellees in the court of appeals and plaintiffs in the district court. Respondents, William Kirby, et al., were appellants in the court of appeals and defendants in the district court.

CERTIFICATE OF THE PARTIES

The parties to this case are:

William N. Kirby, State Commissioner of Education, Respondents  
Texas State Board of Education, Respondents  
Bill Clements, Governor and Chief Executive Officer of the State of Texas, Respondents  
Robert Bullock, State Comptroller of Public Accountants, Respondents  
State of Texas, Respondents  
Jim Mattox, Attorney General of Texas, Respondents  
Andrews Independent School District, Respondents  
Arlington Independent School District, Respondents  
Austwell Tivoli Independent School District, Respondents  
Beckville Independent School District, Respondents  
Carrollton-Farmers Branch Independent School District, Respondents  
Carthage Independent School District, Respondents  
Cleburne Independent School District, Respondents  
Coppell Independent School District, Respondents  
Crowley Independent School District, , Respondents  
DeSoto Independent School District, Respondents  
Duncanville Independent School District, Respondents  
Eagle Mountain-Saginaw Independent School District, Respondents  
Earnes Independent School District, Respondents  
Eustace Independent School District, Respondents  
Glasscock County Independent School District, Respondents  
Grady Independent School District, Respondents  
Grand Prairie Independent School District, Respondents  
Grapevine-Colleyville Independent School District, Respondents  
Hardin Jefferson Independent School District, Respondents  
Hawkins Independent School District, Respondents  
Highland Park Independent School District, Respondents  
Hurst Eulless Bedford Independent School District, Respondents  
Iraan-Sheffield Independent School District, Respondents  
Irvin Independent School District, Respondents

Klondike Independent School District, Respondents  
 Lago Vista Independent School District, Respondents  
 Lake Travis Independent School District, Respondents  
 Lancaster Independent School District, Respondents  
 Longview Independent School District, Respondents  
 Mansfield Independent School District, Respondents  
 McMullen Independent School District, Respondents  
 Miami Independent School District, Respondents  
 Midway Independent School District, Respondents  
 Mirando City Independent School District, Respondents  
 Northwest Independent School District, Respondents  
 Pinetree Independent School District, Respondents  
 Plano Independent School District, Respondents  
 Prosper Independent School District, Respondents  
 Quitman Independent School District, Respondents  
 Rains Independent School District, Respondents  
 Rankin Independent School District, Respondents  
 Richardson Independent School District, Respondents  
 Riviera Independent School District, Respondents  
 Rockdale Independent School District, Respondents  
 Sheldon Independent School District, Respondents  
 Stanton Independent School District, Respondents  
 Sunnyvale Independent School District, Respondents  
 Willis Independent School District, Respondents  
 Wink-Loving Independent School District, Respondents  
 Edgewood Independent School District, Petitioners  
 Socorro Independent School District, Petitioners  
 Eagle Pass Independent School District, Petitioners  
 Brownsville Independent School District, Petitioners  
 San Elizario Independent School District, Petitioners  
 San Antonio Independent School District, Petitioners  
 Pharr-San Juan-Alamo Independent School District,  
 Petitioners  
 Kenedy Independent School District, Petitioners  
 La Vega Independent School District, Petitioners  
 Milano Independent School District, Petitioners  
 Harlandale Independent School District, Petitioners  
 North Forest Independent School District, Petitioners  
 Laredo Independent School District, Petitioners  
 Aniceto Alonzo, on his own behalf and as next friend  
 of his children Santos Alonzo, Hermelinda Alonzo,  
 and Jesus Alonzo, Petitioners  
 Shirley Anderson, on her own behalf and as next friend  
 of her child Derrick Price, Petitioners  
 Juanita Arredondo, on her behalf and as next friend  
 of her children Agustin Arredondo, Jr., Nora Arredondo  
 and Sylvia Arredondo, Petitioners  
 Mary Cantu, on her own behalf and as next friend of her  
 children Jose Cantu, Jesus Cantu and Tonitus Cantu,  
 Petitioners

Josefina Castillo, on her own behalf and as next friend of her child Maria Coreno, Petitioners  
Eva W. Delgado, on her own behalf and as next friend of her child Omar Delgado, Petitioners  
Ramona Diaz, on her own behalf and as next friend of her children Manuel Diaz and Norma Diaz, Petitioners  
Anita Gandara and Jose Gandara, Jr., on their own behalf and as next friends of their children Lorraine Gandara and Jose Gandara, III, Petitioners  
Nicolas Garcia, on his own behalf and as next friend of his children Nicolas Garcia, Jr., Rodolfo Garcia and Rolando Garcia, Graciela Garcia, Criselda Garcia and Rigoberto Garcia, Petitioners  
Raquel Garcia, on her own behalf and as next friend of her children Frank Garcia, Jr., Roberto Garcia, Roxanne Garcia and Rene Garcia, Petitioners  
Hermelinda C. Gonzalez, on her own behalf and as next friend of her children, Angelica Maria Gonzalez, Petitioners  
Ricardo Molina, on his own behalf and as next friend of his child Job Fernando Molina, Petitioners  
Opal Mayo, on her own behalf and as next friend of her children John Mayo, Scott Mayo and Rebecca Mayo, Petitioners  
Hilda Ortiz, on her own behalf and as next friend of her child Juan Gabriel Ortiz, Petitioners  
Rudy C. Ortiz, on his own behalf and as next friend of his children Michelle Ortiz, Eric Ortiz and Elizabeth Ortiz, Petitioners  
Estela Padilla and Carlos Padilla, on their own behalf and as next friends of their children Gabriel Padilla, Petitioners  
Adolfo Patino, on his own behalf and as next friend of his child Adolfo Patino, Jr., Petitioners  
Antonia Y. Pina, on his own behalf and as next friend of his children Antonio Pina, Jr., Alma Pina and Anna Pina, Petitioners  
Reymundo Perez, on his own behalf and as next friend of his children Ruben Perez, Reymundo Perez, Jr., Monica Perez, Raul Perez, Rogelio Perez and Ricardo Perez, Petitioners  
Patricia A. Priest, on her own behalf and as next friend of her children Alvin Priest, Stanley Priest, Carolyn Priest and Marsha Priest, Petitioners  
Demetrio Rodriguez, on his own behalf and as next friend of his children Patricia Rodriguez and James Rodriguez, Petitioners  
Lorenzo G. Solis, on his own behalf and as next friend of his children Javier Solis and Cynthia Solis, Petitioners

Jose A. Villalon, on his own behalf and as next friend  
of his children, Ruben Villalon, Rene Villalon, Maria  
Christina Villalon and Jaime Villalon, Petitioners  
Alvarado Independent School District, Petitioners  
Blanket Independent School District, Petitioners  
Burleson Independent School District, Petitioners  
Canutillo Independent School District, Petitioners  
Chilton Independent School District, Petitioners  
Copperas Cove Independent School District, Petitioners  
Covington Independent School District, Petitioners  
Crawford Independent School District, Petitioners  
Crystal City Independent School District, Petitioners  
Early Independent School District, Petitioners  
Edcouch-Elsa Independent School District, Petitioners  
Evant Independent School District, Petitioners  
Fabens Independent School District, Petitioners  
Farwell Independent School District, Petitioners  
Godley Independent School District, Petitioners  
Goldthwaite Independent School District, Petitioners  
Grandview Independent School District, Petitioners  
Hico Independent School District, Petitioners  
Jim Hogg County Independent School District,  
Petitioners  
Hutto Independent School District, Petitioners  
Jarrell Independent School District, Petitioners  
Jonesboro Independent School District, Petitioners  
Karnes City Independent School District, Petitioners  
La Feria Independent School District, Petitioners  
La Joya Independent School District, Petitioners  
Lampasas Independent School District, Petitioners  
Lasara Independent School District, Petitioners  
Lockhart Independent School District, Petitioners  
Los Fresnos Independent School District,  
Petitioners  
Lyford Independent School District, Petitioners  
Lytle Independent School District, Petitioners  
Mart Independent School District, Petitioners  
Mercedes Independent School District, Petitioners  
Meridian Independent School District, Petitioners  
Mission Independent School District, Petitioners  
Navasota Independent School District, Petitioners  
Odem-Edroy Independent School District, Petitioners  
Palmer Independent School District, Petitioners  
Princeton Independent School District, Petitioners  
Progreso Independent School District, Petitioners  
Rio Grande City Independent School District,  
Petitioners

Roma Independent School District, Petitioners  
Rosebud-Lott Independent School District, Petitioners  
San Antonio Independent School District, Petitioners  
San Saba Independent School District, Petitioners  
Santa Maria Independent School District, Petitioners  
Santa Rosa Independent School District, Petitioners  
Shallowater Independent School District, Petitioners  
Southside Independent School District, Petitioners  
Star Independent School District, Petitioners  
Stockdale Independent School District, Petitioners  
Trenton Independent School District, Petitioners  
Venus Independent School District, Petitioners  
Weatherford Independent School District, Petitioners  
Ysleta Independent School District, Petitioners  
Connie DeMarse, on her own behalf and as next  
friend of her children Bill DeMarse and Chad  
DeMarse, Petitioners  
B. Halbert, on his own behalf and as next friend  
of his child, Elizabeth Halbert, Petitioners  
Libby Lancaster, on her own behalf and as next  
friend of her children, Clint Lancaster, Lyndsey  
Lancaster, and Britt Lancaster, Petitioners  
Judy Robinson, on her own behalf and as next  
friend of her child, Jena Cunningham, Petitioners  
Frances Rodriguez, on her own behalf and as next  
friends of her children Ricardo Rodriguez and  
Raul Rodriguez, Petitioners  
Alice Salas, on her own behalf and as next friend  
of her child, Aimee Salas, Petitioners



### POINTS OF ERROR

1. The court of appeals erred in holding that the Texas system of funding public education does not violate the constitutional guarantee of equal rights (Op. 3-13) (point 1 in motion for rehearing).

2. The court of appeals erred in holding that the denial of equal educational opportunity does not violate a fundamental right under the Texas Constitution (Op. 3-8) (point 2 in motion for rehearing).

3. The court of appeals erred in holding that wealth is not a suspect classification in the school finance context (Op. 8) (point 3 in motion for rehearing).

4. Even if strict scrutiny is not mandated, the court of appeals erred in holding that the Texas system of funding public education satisfies rational basis analysis (Op. 8-9) (point 4 in motion for rehearing).

5. The court of appeals erred to the extent that it held that Article VII, Section 3 of the Texas Constitution legitimates the existing Texas system of funding public education (Op. 9-13) (point 5 in motion for rehearing).

6. The court of appeals erred in failing to hold that the Texas system of funding public education violates the constitutional guarantee that the Legislature make suitable provision for an efficient public school system (Op. 13) (points 6 and 7 in motion for rehearing).

7. The court of appeals erred in failing to hold that the Texas system of funding public education violates the due course of law provision of the Texas Constitution (Op. 15) (point 8 in motion for rehearing).

8. The court of appeals erred in overruling petitioners' Point of Error No. 1, which read:

"The trial court erred in denying recovery of attorney's fees on the ground of sovereign immunity."

(Tr. 506-507) (point 9 in motion for rehearing).

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## STATEMENT OF THE CASE

The trial court correctly held the Texas system of funding public education to be unconstitutional as violative of the state constitutional guarantees of equal rights, due course of law, and an efficient and suitable school system. The court of appeals erroneously reversed the judgment of the trial court.

In viewing this case, we must not lose sight of what is truly at stake. It is nothing less than the future welfare of this State and the lives of hundreds of thousands of children. Will we continue to tolerate an educational system that perpetuates second class citizenship? All of the evidence confirms what common sense tells us: children from low income and language minority families have the greatest educational needs, yet their school districts, burdened by inadequate property tax bases, spend well below the state average on their educational programs.

The United States Supreme Court rejected a federal constitutional challenge to the Texas school finance system. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 36 L.Ed.2d 16 (1973). Justice Marshall, in his dissent in Rodriguez, invited "further review of state educational funding schemes under State constitutional provisions." Id. at 133 n.100, 36 L.Ed.2d at 101 n.100 (Marshall, J., dissenting). This case represents such a challenge.

Unlike the framers of the federal Constitution, the leaders of the Texas Independence and the founders of our modern Constitution expressly recognized that public education is

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SUPREME COURT OF TEXAS CASES

EDGEWOOD

INDEPENDENT

SCHOOL DISTRICT, ET AL.

U.

KIRBY,

WILLIAM,

ET AL.

(3RD

DISTRICT)

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EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL. V. KIRBY,  
WILLIAM, ET AL. (3RD DISTRICT)

003  
1988-89



"essential to the preservation of the liberties and rights of the people." The current funding system, however, is failing a significant portion of the State's student population, thereby jeopardizing their liberties and rights.

**STATEMENT OF JURISDICTION  
AND JURISPRUDENTIAL IMPORTANCE**

Jurisdiction exists under Section 22.001(a)(1), (2), (3), (4), and (6) of the Texas Government Code Annotated (Vernon 1988).

The first of those provisions pertains because one member of the Court of Appeals below filed a lengthy dissenting opinion.

Subdivision 2 applies because the Dallas Court of Appeals has ruled differently from the court of appeals in this case on a question of law material to a decision of this case. In Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App.--Dallas 1987, wit ref'd n.r.e.), the court held that education is a fundamental right under the Texas Constitution. The court of appeals in the instant case held to the contrary (Op. 3-8).

Subdivision 3 applies because this case involves the construction or validity of a statute necessary to the determination of the case. Petitioners herein challenge the constitutionality of Tex. Educ. Code §16.001, et seq., which governs the state's financing of education.

Subdivision 4 applies because this case involves the allocation of state revenue.

Finally, Subdivision 6 applies because the court of appeals has committed an error which is of "importance to the jurisprudence of the state." The importance of the errors committed by the court of appeals can hardly be overstated. If left uncorrected, the judgment of the court of appeals will deny a significant percentage of Texas school children an equal educational opportunity. If ever a case demanded discretionary review, it is this one.

#### STATEMENT OF FACTS

This case is highly factual. It required months of trial, and the record includes an 8,000 page statement of facts and hundreds of pages of documentary exhibits. The trial court's extensive findings of fact have been undisturbed on appeal. The summary that follows is based upon these findings and the record below. By agreement of all parties the 1985-86 school year was used for purposes of constitutional review.

The trial court found that significant funding disparities permeate the Texas system of public school finance. These disparities seriously impair the educational opportunities of children in the poor school districts. The disparities result from two factors: (1) the widely disparate tax bases harbored within the local districts themselves; and (2) the State's heavy reliance upon local district property wealth to fund the State's public education program.

1. Overview of the funding system.

Texas public schools educate approximately 3 million students. (Tr. 548).<sup>1</sup> Under the current system of public school finance, the state and the local school districts share the cost of school operations. "The Texas public education system is a State system which includes both state appropriations and revenues from local ad valorem taxes." (Tr. 548). (Ad valorem taxes are taxes imposed on the value of real property.) "The Texas system in 1985-86 was funded at approximately \$11,000,000,000.00, 42% of which was provided by the State and 49% of which was provided by local district taxes." (Tr. 548).

The State employs a complex formula, as part of its Foundation School Program (FSP), designed to make the amount of state aid (the 42% of total funding identified above) directed to each district proportional, in some way, to the districts' property wealth. However, "[t]here are no F.S.P. allotments for facilities." (Tr. 566). More important, the F.S.P. represents only a small portion of the cost of public education. "The F.S.P. does not cover the real cost of education and virtually all districts spend above the F.S.P. to enrich the educational program and these expenditures are necessary to provide students an adequate educational opportunity."

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<sup>1</sup>The Transcript is cited as "Tr."; all citations to the Transcript refer to the trial court's Findings of Fact and Conclusions of Law. In addition, the Statement of Facts is cited as "S.F."

(Tr. 565). "Of the total expenditures for public education in 1985-86 almost \$3,000,000,000 was expended by local districts from their tax base . . . over and above the FSP." (Tr. 548). As Commissioner Kirby and Walker explain in their primer on school finance: The greatest expenditures of

local tax dollars for public education are in the form of unequalized local enrichment of the FSP . . . It would be misleading to look upon all so-called expenditures as "enrichment" . . . [because] . . . unequalized local enrichment is not enrichment in most cases; it is the local response to the need for quality educational programs, local payroll costs, and unfunded or partially funded mandates.

(Pl. Ex. 235 at 43-44).<sup>2</sup>

## 2. Local property wealth.

"There is a vast disparity in local property wealth among the school districts. The wealthiest school district in Texas has over \$14,000,000 of property wealth per student. The poorest district has approximately \$20,000 of property wealth per student," a ratio of 700 to 1. (Tr. 548). "The 1,000,000 students in the districts at the upper range of property wealth in Texas have more than 2 1/2 times as much property wealth to support their schools as the 1,000,000 students in the bottom range of the districts; the

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<sup>2</sup>W. Kirby and B. Walker, The Basics of Texas Public School Finance (3rd ed. 1986). Exhibit 235 is a jointly authored publication by defendant Commissioner Kirby and witness Walker, both of whom testified as experts in this case.



300,000 students in the lowest-wealth schools have less than 3% of the State property wealth to support their education, while the 300,000 students in the highest property wealth schools have over 25% of the State's total property wealth to support their education." (Tr. 548-49). Furthermore, "[t]his wealth disparity between districts is based on nothing more than the irrational accident of school district lines." (Tr. 549).

### 3. School district boundaries.

At the turn of the century, there were approximately 11,000 school districts in Texas. (S.F. 1923). Today, there are 1,063. (Tr. 548). The origins of today's 1,063 school districts seem to be lost in the mists of time, for even Commissioner Kirby has no idea how they were originally created (S.F. 6784). As defense witness Collins testified, many of the school district lines were "negotiated by county commissioners or people within those counties," and in some instances they were created simply as "tax havens like the people who owned the property in the Santa Gertrudis I.S.D." (S.F. 4138). Dallas Independent School District, for example, was created by a special act of the Legislature in 1947 (S.F. 4133), and other districts, such as Highland Park, are an "aberration" (S.F. 4106). Many districts, such as the Carrollton-Farmers Branch, simply grew like topsy, picking up pieces of other districts and cutting across county and city lines. (S.F. 5663). Nevertheless, school districts remain

nothing more than "subbdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee v. Leonard I.S.D., 24 S.W.2d 449, 450 (Tex.Civ.App.--Texarkana 1930, writ ref'd).

Thus, as the trial court found, "Texas, in its creation and development of school district boundaries, did not follow any rational or articulated policy. . . . There is no underlying rationale in the district boundaries of many school districts in Texas and there are many districts that are pure tax havens." (Tr. 573).

4. Disparities: The denial of equal educational opportunity.

The huge disparities in property wealth among the districts and the State's heavy reliance upon this wealth to fund public education result in dramatic and shocking differences in the quality of educational programs offered across the State.

a. Variations in expenditures and taxes.

Because their tax bases are so much lower, poorer districts must tax at higher tax rates than the wealthier districts. Even with higher tax rates, however, poorer districts are unable to approach the level of expenditures maintained by wealthier districts. Wealthier districts, taxing at lower rates, are able

to spend significantly more per student. Conversely, poorer districts endure a much higher tax burden, yet are still unable to adequately fund their educational programs.

The relationships between local property wealth, tax burden, and expenditures, which are so debilitating to the poorer school districts, are revealed in comparing districts at the top and bottom of the property wealth spectrum: "The range of local tax rates in 1985-1986 was from \$.09 [wealthy district] to \$1.55 [poor district] per \$100 valuation," a ratio in excess of 17 to 1. (Tr. 552). By comparison, the range of "[t]he rate of expenditure per student in 1985-86 was from \$2,112 per student [poor district] . . . to \$19,333 [wealthy district]." (Tr. 550-51). In the State's 200 poorest school districts the average tax rate is 74.82 cents per \$100.00 valuation, while in the 200 richest districts the average rate is 58.79 cents. (Tr. 555). Yet the wealthiest 200 districts are still able to spend much more: the average expenditure per student in the 200 poorest districts is \$3,005.32 per student, while in the 200 richest districts the average expenditure is twice as much at \$6,017.33 per student. (Tr. 555).

Three trial court exhibits graphically demonstrate this phenomenon. (Appendix at 1-3).<sup>3</sup> First, Exhibit 102-S depicts the taxable property value per student unit, arrayed on the district property wealth spectrum. Thus, for example, the 150,000 students

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<sup>3</sup>The Appendix also contains maps taken from documentary evidence in the record demonstrating the significant disparities that exist in several Texas counties.

residing in the poorest 5% of districts have less than \$30,000.00 in taxable property value per student to fund their education, whereas the 150,000 students residing in the wealthiest 5% of districts have in excess of \$500,000.00 per student to fund their education, a ratio of more than 16 to 1. Second, Exhibit 108-S demonstrates the tax rate required to raise \$100.00 per student unit. For example, in the State's poorest districts a tax of 37 cents per \$100.00 valuation is required to produce \$100.00 per student, whereas in the State's wealthiest districts only a 1 cent tax per \$100.00 valuation will produce \$100.00 per student. In other words, in the State's poorest districts a tax rate 37 times greater than that in the wealthiest districts is required to raise the same amount of money.

All of this data, of course, translates into significant spending differences based upon local wealth. Exhibit 107-S depicts expenditures per student unit above the F.S.P., arrayed on the district property wealth spectrum. The chart demonstrates what the trial court found: "There is a direct positive relationship between the amount of property wealth per student in a district and the amount the district spends on education." (Tr. 555). For example, "[t]he 50 poorest districts had an average tax rate of 71.96 cents (per hundred dollars of property value) and spent on average \$2,941.36 per student compared to the 50 richest districts which taxed at 37.26 cents on average and spent \$8,700.70 per student." (Tr. 555; Ex. 207-S).

The injurious effects of the State's system of public school finance is also underscored by an analysis of our three major urban counties. In Dallas County, "the wealthy Highland Park district . . . taxed at 35.16 cents and spent \$4,836.00 per student while its poor (largely black) neighbor Wilmer-Hutchins taxed at \$1.05 yet was only able to raise and spend \$3,513.00 per student." (Tr. 556). In Bexar County, "the wealthy Alamo Heights district . . . taxed at 56.76 cents and spent \$4,127.00 per student while its poor neighbor Southside I.S.D. taxed at \$1.10 yet was only able to raise and spend \$2,853.00 per student." (Tr. 557). In Harris County, "the wealthy Deer Park I.S.D. . . . taxed at 64.37 cents and spent \$4,846.00 per student while its poor neighbor North Forest I.S.D. taxed at \$1.05 yet was only able to raise and spend \$3,182.00 per student." (Tr. 557).

The Appendix demonstrates similar examples from across the State. Some of the more egregious instances of disparity are found in the following counties: Val Verde County--the Juno district, which has only nine students and does not maintain a twelve grade system, but spends \$6,003.00 per student, based on a tax rate of only 16 cents per \$100.00 valuation, as contrasted with its neighbor the San Felipe/Del Rio district, which with a tax rate of 48 cents per \$100.00 valuation spends only \$2,505.00 per pupil; Kleberg County--the Laureless district, which has only 44 students and does not maintain a twelve grade system, but spends \$13,223.00 per student, based on a tax rate of 13 cents per \$100.00 valuation, as contrasted with its the neighbor the Ricardo district, which

with a tax rate of \$1.32 per \$100.00 valuation spends only \$3,488.00 per student; and Hutchinson County--the Spring Creek district, which has only 29 students and does not maintain a twelve grade system, but spends \$15,390.00 per student, based on only a tax rate of only 58 cents per \$100.00 valuation, as contrasted with the Borger district, which with a tax rate of 98 cents per \$100.00 valuation spends only \$3,138.00 per student.

b. Educational opportunities.

The trial court found that these differences in expenditure levels operated to "deprive students within the poor districts of equal educational opportunities." (Tr. 552). "Increased financial support enables wealthy school districts to offer much broader and better educational experiences to their students." (Tr. 559). These better and broader educational experiences include more extensive curricula, enhanced educational support through additional training materials and technology, improved libraries, more extensive counseling services, special programs to combat the dropout problem, parenting programs to involve the family in the student's educational experience, and lower pupil-teacher ratios. (Tr. 559). In addition, districts with more property wealth offer higher teacher salaries than poorer districts in their areas. (Tr. 559). "This allows these wealthier districts to recruit, attract and retain better teachers for their students." (Tr. 559).

The record abounds with examples of such regrettable disparities. Despite the high tax rate of the property-poor North Forest I.S.D., its revenues are such that the district "is unable to compete with its wealthier neighbors for teachers because it cannot match their salary offerings"; one unfortunate result -- the district had "the highest failure rate in Texas on the TECAT exam." (Tr. 560). Socorro I.S.D. in El Paso County, "because of its high growth rate and inadequate facilities, has been forced to build new buildings, and the district now is unable to make payment on [the] principal and faces potential bankruptcy." (Tr. 560). The San Elizario district is "so poor that it cannot provide an adequate curriculum for its students; it offers no foreign language, no pre-kindergarten program, no college preparatory program and . . . virtually no extracurricular activities." (Tr. 560).

The trial court was fully justified in concluding that "[t]he differences in expenditure levels found throughout the state are significant and meaningful in terms of the educational opportunities offered to students and the effect of these differing levels of expenditure is to deprive students within the poor districts of equal educational opportunities." (Tr. 552).

A corollary to this finding reveals a bitter irony. "[C]hildren with the greatest educational needs are heavily concentrated in the State's poorest districts." (Tr. 562). It is "significantly more expensive to provide an equal educational opportunity to low-income children and Mexican American children than to educate higher income and non-minority children." (Tr.

563). Therefore, the children whose need for an equal educational opportunity is greatest are denied this opportunity.

5. Conclusion.

The trial court concluded of the Texas system of funding public education: "The wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property poor school districts suffer a denial of equal educational opportunity." (Tr. 592).

ARGUMENT

I. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE STATE CONSTITUTIONAL GUARANTEE OF EQUAL RIGHTS.

The starting point in this appeal is the determination of the applicable standard of review. Under the Texas Constitution, if a "fundamental right" is involved or if a "suspect classification" has been created by the legislature, then the present educational system can be upheld only if it passes "strict scrutiny" analysis. If neither a "fundamental right" nor a "suspect class" is



implicated, the present system must still be demonstrated to rationally serve its stated purpose. This brief will demonstrate, first, that "strict scrutiny" is warranted and that the District Court correctly found that the Texas school funding system to fail under this level of scrutiny. Second, and in the alternative, this brief will demonstrate that even under the "rational basis" test, the present system can not withstand review, in several important respects.

A. The denial of equal educational opportunity violates a fundamental right under the Texas Constitution.

"Fundamental rights have their genesis in the express and implied protections of personal liberty recognized in federal and state constitutions." Spring Branch I.S.D. v. Stamos, 695 S.W.2d 556, 560 (Tex. 1985). Applying this standard, entitlement to equal educational opportunity is a fundamental right under the Texas Constitution.

Article I, Section 3 of the Texas Constitution guarantees to all persons equality of rights, providing that

All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services. (emphasis added)

All of the Texas Constitutions have contained equality of rights provisions; the Constitutions of 1845, 1861 and 1866 contained

identical language. Tex. Const. art. I, §3, interp. commentary (Vernon 1955).

Unlike the federal Constitution, our current Texas Constitution expressly declares the fundamental importance of education, providing that education is "essential to the preservation of the liberties and the rights of the people." Tex. Const. art. VII, §1 (emphasis added).

From the date of the signing of the Texas Declaration of Independence, education has been regarded as one of the most important functions of Texas government. The Declaration of Independence, in reciting the list of grievances justifying the Revolution, gave paramount importance to education. Public education was viewed as a right of equal stature with the right to trial by jury and the right to worship according to one's conscience. The Declaration recited:

It has failed to establish any public system of education, although possessed of almost boundless resources, (the public domain;) and although it is an axiom in political science, that unless people are educated and enlightened, it is idle to expect the continuance of civil liberty, or the capacity for self government. (emphasis added)

The first Texas Constitution, adopted shortly thereafter, provided that it shall "be the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education." Tex. Const. art. VII, §1, interp. commentary (Vernon 1955). The Texas Constitution now provides in Article VII, Section 1:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty

of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools. (emphasis added)

Article VII, Section 1, recognizing the fundamental importance of education, imposes a mandatory duty upon the Legislature to make suitable provision for the support and maintenance of an efficient school system. See Bowman v. Lumberton I.S.D., 32 Tex.Sup.Ct.J. 104, 106 (Dec. 7, 1988). Article I, Section 3, guarantees the equality of rights of all citizens. It is in these two constitutional provisions that equal educational opportunity has its genesis as a fundamental right in the Texas Constitution. See Stamos, 695 S.W.2d at 560.

The Texas Legislature and Texas courts have consistently recognized that the Texas Constitution provides for equality of educational opportunity. In 1948, the Texas Legislature authorized with these words, the creation of the Gilmer-Aikin Committee to assess the state of public education in Texas:

#### HOUSE CONCURRENT RESOLUTION

WHEREAS, Over a period of many years unequal educational opportunities have existed through the State of Texas between the several schools comprising the public school system of Texas; and

WHEREAS, There are many factors entering into and complicating this situation; and

WHEREAS, Leading educators and educational authorities, both in and outside the teaching profession, agree that the educational inequalities, above mentioned, are increasing rather than decreasing, so that in spite of the foresight and evident intentions of the

founders of our State and the framers of our State Constitution to provide equal educational advantages for all, Texas continues to lag farther and farther behind educationally; (emphasis added)

Tex. H.C. Res. 48, 50th Leg. (1948). The Legislature has explicitly confirmed the constitutional commitment to equality in promulgating Section 16.001 of the Texas Education Code, enacted in 1977:

It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each student enrolled in the public school system shall have access to programs and services that are appropriate to his or her educational needs and that are substantially equal to those available to any other similar student, notwithstanding varying local economic factors. (emphasis added)

These legislative expressions are important because legislative and executive interpretations of a constitutional provision, acquiesced in by the people and long continued, are of great weight in determining a provision's meaning, and in case of doubt will be followed by the courts. Mumme v. Marrs, 40 S.W.2d 31, 35 (Tex. 1931). See also Walker v. Baker, 196 S.W.2d 324 (Tex. 1946); Moore v. Edna Hospital District, 449 S.W.2d 508, 525 (Tex.Civ.App.--Corpus Christi 1970, writ ref'd n.r.e).

Texas courts hold that "[t]he fostering of public education has always been regarded in this state as one of the most important functions of government." Simpson v. Pontotoc, 275 S.W. 449, 452 (Tex.Civ.App.--Austin 1925, writ ref'd). Two Texas cases flesh out

the constitutional term "efficient": Mumme, supra; and Watson v. Sabine Royalty, 120 S.W.2d 938 (Tex.Civ.App. -- Texarkana 1938, writ ref'd). In both instances the courts directly linked efficiency and equality. In Mumme, the court observed:

That rural aid appropriations have a real relationship to the subject of equalizing educational opportunities in the state, and tend to make our system more efficient, there can be no doubt.

Mumme, 40 S.W.2d at 37. In Watson the court noted that "the Supreme Court in Mumme . . . has taken judicial cognizance of the fact that the efficiency of the schools in a given locality is connected with the concurring circumstances of population and taxable wealth." Watson, 120 S.W.2d at 942. Watson upheld the constitutionality of legislation which created a county-wide equalization district in Rusk county in order to alleviate problems resulting from some school districts "having large taxable values and others of small taxable values, such as to make a great inequality between some districts in the same county in their financial ability to provide for their school needs." Id.

The only other Texas appellate court to directly confront the fundamental right question concluded that "[a]lthough public education is not a right guaranteed to individuals by the United States Constitution," it is a "fundamental right guaranteed by the Texas constitution," citing Article VII. Stout v. Grand Prairie I.S.D., 733 S.W.2d 290, 294 (Tex.App.--Dallas 1987, writ ref'd n.r.e.)

A number of courts in other states have similarly held that education is a fundamental right, citing state constitutional provisions similar to Article VII, Section 1, in interaction with state constitutional equal protection guarantees. For example, the Connecticut Supreme Court held that education is a fundamental right, relying on a far weaker constitutional requirement. Horton v. Meskill, 172 Conn. 615, 376 A.2d 359 (1977). The Connecticut Constitution provides:

There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.

376 A.2d at 362. The Texas Constitution imposes a significantly greater duty upon the legislature, one which more readily connotes equality of opportunity. Similarly, the supreme courts of West Virginia and Wyoming have recognized education as a fundamental right under their respective constitutions, again directing attention to the interaction between education clauses and equal protection guarantees. Pauley v. Kelly, 255 S.E.2d 859, 878 (W. Va. 1979) ("Certainly, the mandatory requirement of 'a thorough and efficient system of free schools,' found in . . . our Constitution, demonstrates that education is a fundamental constitutional right in this State."); Washakie County School District No. One v. Herschler, 606 P.2d 310, 333 (Wyo. 1980) ("In the light of the emphasis which the Wyoming Constitution places on education, there is no room for any conclusion but that education for the children of Wyoming is a matter of fundamental interest.").

The court of appeals simply ignored the constitutionally created linkage between education and the "essential principles of liberty and free government." Tex. Const., art. I. The language of Article VII, Section 1, demonstrates the role education was to play in preserving these rights. Education provides the means -- the capacity -- to exercise all critical rights and liberties. Education gives meaning and substance to other fundamental rights, such as free speech, voting, worship, and assembly, each guaranteed by the Texas Constitution. Article VII, Section 1, evokes the words of Thomas Jefferson, who said that education renders "the people safe, as they are the ultimate, guardians of their own liberty." T. Jefferson, Notes on the State of Virginia 148 (W. Peden ed. 1955).

It was precisely this relationship between education and the preservation of rights and liberties that motivated the California Supreme Court to hold education to be a fundamental right under the California Constitution, noting education's "impact on those individual rights and liberties which lie at the core of our free and representative form of government." Serrano v. Priest (II), 18 Cal.3d 728, 557 P.2d 929, 959, 135 Cal. Rptr. 345 (1976). The Texas Constitution makes this relationship explicit.

While the federal Constitution at issue in Rodriguez makes no mention of education, the Texas Constitution imposes a mandatory duty on the Legislature to make "suitable provision for the support and maintenance of an efficient system of public free schools." In addition to the textual differences between our federal and

state constitutions, however, the differences in the specific content of the sets of rights the federal and state levels of government are designed to protect are instructive in this case. Consistent with the notion of federalism, as explained in Rodriguez, certain rights and protections are more logically provided for under state constitutions. Education, so identified as a function of state government, is such a right.

"The protection of individual rights is a central goal of, and limit on, both the federal government and the states. But the roles and focuses of federal and state governments in guaranteeing rights are not identical." Developments in the Law -- The Interpretation of State Constitutional Rights, 95 Harv.L.Rev. 1324, 1347 (1982).<sup>4</sup> Several commentators have recognized these differences in explaining the result reached in Rodriguez, a result in part justified by "the concern for a balanced federalism [that] deters the Court from finding federal constitutional issues in activities that are closely identified with state or local government." Id. at 1349. The United States Supreme Court must establish law suitable for national application. See also L. Tribe, American Constitutional Law 1654 (2nd ed. 1988); L. Sager, Foreword: State Courts and the Strategic Space Between the Norms

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<sup>4</sup>The variation results from differences in the specific content of the rights each level of government is designed to protect, the recent dominance of expansive federal doctrines in certain substantive areas, and the institutional differences between the federal and state constitutions and judiciaries. Developments, supra at 1347.



and Rules of Constitutional Law, 63 Tex. L. Rev. 959, 974 (1985) (observing that in Rodriguez "Justice Powell decried the ability of the Court to fashion a workable constitutional rule that would be portable to the diverse institutional environments of the fifty states").<sup>5</sup>

It is for these reasons that commentators assessing the manner in which state judges interpret state constitutions generally hold education cases to pose the best opportunity for state constitutions to play a meaningful, intended, and independent role in preserving the full range of individual liberties fundamental in this federalist society and, conversely, to pose the least danger of manipulation and overreaching by an activist state judiciary. Developments, supra; Sager, supra; see also, E. Maltz, The Dark Side of State Court Activism, 63 Tex. L. Rev. 995 (1985) (generally critical of differing interpretations of the federal and state constitutions, but concedes that where federalism is important, such as in school finance cases, and there are textual differences, state courts may fill a unique role).

In conclusion, meaning must be given to the directive in Stamos that fundamental rights have their genesis in the express

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<sup>5</sup>As our State Constitution makes clear, education is fundamentally a state concern. The United States Supreme Court has recognized this fact. Rodriguez, 411 U.S. at 44-58, 36 L.Ed.2d at 49-58. Every state constitution contains an education clause; all but one require the state legislature to establish and maintain public schools. Developments, supra, at 1446. By contrast, there is no mention of education in the federal constitution. Rodriguez, 411 U.S. at 35, 36 L.Ed.2d at 44.

and implied protections of personal liberty recognized in federal and state constitutions. Entitlement to equal educational opportunity has its genesis in the interaction between the education clause, Article VII, Section 1, and the equal rights guarantee, Article I, Section 3, of our State Constitution. Note, in fact, the similarity of language: Stamos speaks of "protections of personal liberty;" the Constitution speaks of education as "essential to the preservation of the liberties and rights of the people." The language this Court used in Stamos is virtually identical to the language of Article VII, Section 1 in that both are concerned with the protection of personal liberty. The framers leave no doubt that they considered education essential to the exercise and protection of personal liberty: they saw, indeed created, the "nexus" between education and liberty that the Rodriguez court found to be a state oriented inquiry.<sup>6</sup>

Accordingly, the court of appeals erred in holding that equality of educational opportunity is not a fundamental right under the Texas Constitution. (Op. 3-8). The court of appeals

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<sup>6</sup>This Court has held that "a right of individual privacy is implicit among those 'general, great, and essential principles of liberty and free government' established by the Texas Bill of Rights. Tex. Const., art. I, Introduction to the Bill of Rights." T.S.E.U. v. Department of Mental Health, 746 S.W.2d 203, 205 (Tex. 1987). (Significantly, this holding extends privacy protection beyond that afforded under the federal constitution. See, e.g., Gulden v. McCorkle, 680 F.2d 1070, reh. denied with opinion, 685 F.2d 157 (5th Cir. 1982)). So too is equal educational opportunity a "general, great, and essential principle of liberty and free government."

mistakenly relies entirely on Rodriguez, disregarding the textual differences between the state and federal constitutions, and ignoring that the provision of education is preeminently a state matter. The dissenting opinion is correct in its reasoning that education is a fundamental right under the Texas Constitution. (Diss. Op. 5-9). See also Stout, 733 S.W.2d at 294.

B. Wealth is a Suspect Classification, in the School Finance Context, Under the Texas Constitution.

Wealth is a suspect category in the context of discrimination against low-income persons by a state school finance system. Serrano v. Priest II, 557 P.2d at 957. In addition, a fundamental right can not be denied because of wealth. Shapiro v. Thompson, 394 U.S. 618, 22 L.Ed.2d 600 (1969). Justice Gammage, in his dissenting opinion, ably distinguishes Rodriguez, the sole case relied upon by the court of appeals in its suspect classification analysis. (Diss. Op. 9-10). The Rodriguez Court observed: "There is no basis on the record in this case for assuming that the poorest people -- defined by reference to any level of absolute impecunity -- are concentrated in the poorest districts." Rodriguez, 411 U.S. at 23, 36 L.Ed.2d at 37 (emphasis added). Unlike the Rodriguez Court, this Court now confronts a record replete with substantiated and undisputed findings on the wealth issue. (Tr. 562-564). For example, "[t]here is a pattern of a

great concentration of both low-income families and students in the poor districts and an even greater concentration of both low-income students and families in the very poorest districts." (Tr. 563).

C. The Texas System of Funding Public Education Does Not Satisfy Heightened Equal Protection Scrutiny.

Because the Texas school finance system infringes upon a fundamental right accorded under the Texas Constitution and/or burdens an inherently suspect class, the system is subject to strict or heightened equal protection scrutiny. Stamos, 695 S.W.2d at 560. This standard of review requires that the infringement upon a fundamental right, or the burden upon an suspect class, must be "reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive, more reasonable means." T.S.E.U., 746 S.W.2d at 205.

The Texas school finance system cannot survive this heightened level of scrutiny.<sup>7</sup> Most of the time, the state seems to concede as much. The U.S. Supreme Court also said as much in Rodriguez, recognizing that should strict scrutiny be invoked, the unconstitutionality of the system would be affirmed. 411 U.S. at 16-17, 36 L.Ed.2d at 33. See Tribe, supra at 1667; Developments,

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<sup>7</sup>Our review of the record and the trial court's findings that the present system is not even rationally related to a legitimate state purpose is equally pertinent here.

supra at 1456.

At other times, the state seems to argue that Article VII, §3's authorizing of local districts and allowing them to tax is a sufficiently "compelling" objective. To say, however, that Article VII authorizes the existence of districts is not to say that whatever emerges is constitutional or beyond judicial scrutiny. Article VII, Section 3, neither authorizes nor insulates the vast inequalities that have emerged. The trial court found, as a fact, that there is simply no rationale that justifies the discrimination in funding and taxes that are the product of the current process.<sup>8</sup>

D. The Texas System of Funding Public Education Does Not Satisfy Rational Basis Equal Protection Analysis.

The Texas Supreme Court has fashioned its own rational basis test to determine the reach of the equal rights provision of the Texas Constitution. In Whitworth v. Bynum, 699 S.W.2d 194 (Tex. 1985), this Court reviewed the Texas Guest Statute. Aimed at preventing collusive lawsuits, the Guest Statute prohibited

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<sup>8</sup>While a measure of local choice may be provided to school districts under the current scheme, it is absurd to argue that local choice can not be guaranteed by more reasonable means. In fact, as the experts testified and the trial court accepted, local control will actually be enhanced by equalizing the present funding system by allowing all districts to at least be making similar decisions with similar consequences. This finding is entitled to deference. T.S.E.U., at 746 S.W.2d at 206.

automobile passengers from suing a driver who was within the second degree of affinity. The United States Supreme Court had previously rejected a federal equal protection claim aimed at a similar Connecticut guest statute. Silver v. Silver, 280 U.S. 117, 74 L.Ed. 221 (1929).

At the outset, the Whitworth Court dispensed with Tisko v. Harrison, 500 S.W.2d 565 (Tex.Civ.App.--Dallas 1973, writ ref'd n.r.e.), an earlier Texas case upholding the constitutionality of the Guest Statute:

More importantly, Tisko, although mentioning the Texas equal protection provision, observed that "[n]o contention is made that the 'equal rights' provision of our state Bill of Rights, Tex. Const. art. I, §3 (Vernon 1955), establishes a different and more exacting standard for the Texas Legislature." . . . Finally, Tisko relied upon Silver as the basis for holding the statute constitutional.

In his brief and at oral argument, Bynum contended that any constitutional question as to the Guest Statute is foreclosed by federal precedent in this area. He alleged that Silver, which declared the Connecticut statute to be constitutional, forecloses any consideration by this court as to the statute's constitutionality. We disagree. Subject to adhering to minimal federal standards, we are at liberty to interpret state statutes in light of our own constitution and to fashion our own tests to determine a statute's constitutionality. (emphasis added)

699 S.W.2d at 196. It is thus critical to stress that the rational basis standard is not the toothless or rubber stamp standard described by the court of appeals (Op. 8-9): even under rational basis review a legislative act must rationally and purposefully

connect ends and means. This is particularly true, when, as here, the Constitution describes the "ends" to be achieved. This is not an instance in which the Legislature has described in a single piece of legislation both the "ends" and "means," and, accordingly, there is even less reason for deference to the legislative product.

In fashioning the "Texas version of the rational basis test," the Whitworth Court turned to an earlier supreme court case, Sullivan v. University Interscholastic League, 616 S.W.2d 170 (Tex. 1981). Although acknowledging that Sullivan turned solely upon the Fourteenth Amendment to the United States Constitution, the Court noted that Sullivan "articulate[s] factors that are important to interpreting Art. I, §3, which is the constitutional basis for this opinion." 699 S.W.2d at 197 n.5.

In Sullivan, the Court reviewed a University Interscholastic League rule that prohibited transfer students from participating in high school athletics. The rule was intended to prevent recruitment of high school athletes, and the case involved "neither a suspect class nor a fundamental right" and the purpose of the rule was a "legitimate state purpose." Sullivan, 616 S.W.2d at 172. Nonetheless, the Court held that equal protection analysis "requires us to reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose." Id. The Court invalidated the rule because it did not "operate rationally" to accomplish its stated purpose, holding that "[t]he over-inclusiveness and the harshness of the transfer rule is not rationally related to the purpose of preventing

recruitment." Id. at 173.

Whitworth incorporates the reasoning of Sullivan into the Texas version of the rational basis test:

Even when the purpose of a statute is legitimate, equal protection analysis still requires a determination that the classifications drawn by the statute are rationally related to the statute's purpose. [citing Sullivan]. Under the rational basis test of Sullivan, similarly situated individuals must be treated equally under the statutory classification unless there is a rational basis for not doing so.

Whitworth, 699 S.W.2d at 197. On this basis, the Court found the guest statute wanting. This test was reaffirmed by this Court in Stamos. Stamos, 695 S.W.2d at 559.

Two observations about Whitworth, Stamos and Sullivan are in order. First, as the Court's opinion in Whitworth makes clear, these cases are measured by a rational basis test quite different from the highly deferential test currently employed in federal analysis. These cases signaled a departure. Prior to Sullivan, the standard applied in equal protection analysis when a fundamental right was not implicated was the standard set forth in Hernandez v. Houston I.S.D., 558 S.W.2d 121, 123-124 (Tex.Civ.App.-Austin 1977, writ ref'd n.r.e.), the decision mistakenly relied upon by the court of appeals:

[I]f the statute does not collide with a fundamental right or create a suspect classification, the statute is accorded a presumption of constitutionality. The presumption may not be disturbed unless the enactment rests upon grounds wholly irrelevant to the achievement of a legitimate state objective. . . .



In fact, the lower appellate court in Sullivan, cited both Hernandez, and Rodriguez to support its conclusion tht the rule was constitutional. Sullivan v. University Interscholastic League, 599 S.W.2d 860 (Tex.Civ.App. -- Austin 1980), rev'd, 616 S.W.2d 170 (Tex. 1981). The Supreme Court in Sullivan, however, rejected this analysis. Furthermore, the Texas Supreme Court applied in Whitworth a "more exacting" standard than had the United States Supreme Court in a comparable case: the former overturned a guest statute; the latter upheld one.

Second, it is irrelevant that Sullivan was grounded on federal equal protection analysis. The Whitworth Court recognized the basis of the equal protection claim made in Sullivan. Yet the Court, in fashioning a Texas rational basis standard, as it is free to do, quite appropriately drew from the reasoning of Sullivan.

Thus, Whitworth firmly establishes, as a matter of Texas constitutional law, that Texas courts are not bound to follow federal precedent in determing the reach of the "equal rights provision of our State Bill of Rights." Indeed, Texas courts do apply a more "exacting [equal protection] standard for the Texas Legislature." The United States Supreme Court's rational basis analysis in Rodriguez was rejected in Sullivan and is not controlling.

The court of appeals seems to assume that utilizing local property revenues to finance free public schools is directly linked to effectuating local control of education and that "local control" justifies any unfairness of the current system of public school

finance. The court of appeals reaches this conclusion we believe without taking into account the directives of Whitworth, Stamos, and Sullivan; and in so doing denies the substance of the Texas rational basis test. Furthermore, the court of appeals ignored trial court fact findings "as to the nature of the state's objective and the reasonableness of the means used to achieve it." in direct contravention of T.S.E.U., 746 S.W.2d at 206.

The fact that Article VII, Section 3, contemplates the existence of school districts with the authority to levy local taxes also does not end the constitutional inquiry. The question is whether the Constitution authorizes this Court to ignore the legislative product and the rampant funding discrimination produced by this system.<sup>9</sup>

"Local control" is a seductive phrase. It is frequently proffered by governmental bodies to justify a variety of aberrations, but once proffered as a justification, it becomes not the end, but the beginning of the inquiry. The court must still review the reality of the system to determine whether it indeed does foster meaningful local control. Furthermore, mere notions of local control cannot override the constitutionally mandated goals of efficiency and suitability. For purposes of rational

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<sup>9</sup>It is far too simplistic to say that the language of Article VII, Section 3 "trumps" all inequalities and takes precedence over the equal protection (or efficiency) mandates of our Constitution. Recall that Article VII, Section 3, also speaks of a "poll tax." By the court of appeals' reasoning this language would insulate a tax on voting from any constitutional scrutiny.

basis analysis we should inquire whether the funding system, depending as it does upon a hodgepodge of school districts harboring vast disparities in wealth, reasonably promotes the express constitutional goals of efficiency and suitability or the Court-implied goal of local control. We turn first to the question of local control.

Local control, as it operates in Texas, does not mean control over the formation of school districts or the determination of their boundaries. This is a State function, for school districts are nothing more than "subdivisions of state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people." Lee, 24 S.W.2d at 450.

Local control, as it operates in Texas, does not mean preservation of established communities of interest. For, as found by the trial court, "[n]o particular community of interest is served by the crazy quilt scheme that characterize many of the school district lines in Texas." (Tr. 591). Indeed, "school district boundaries frequently cross city and county boundaries in a random and inexplicable fashion." (Tr. 591). A careful examination of the school district lines in Texas would lead one to believe that the only communities served by many of the districts are those who seek to shelter property from taxation. In Kleberg County, for example, the poorer Ricardo and Kingsville districts simply wrap around their wealthier neighbors, the Laureless and Santa Gertrudis districts; the Laureless district has

a tax rate of 13 cents and the Ricardo district a rate of \$1.32. (Appendix at 29). Nor is it easy to perceive the community of interest served by the Divide school district of Kerr county, with five students and a 21 cents tax rate, as contrasted with the neighboring Ingram district, with 760 students and a 64 cents tax rate. (Appendix at 28). There are no communities of interest preserved by these patterns. In fact, "[i]n many instances it appears that district lines actually fragment communities of interest." (Tr. 591). The trial court reasonably concluded "that the claim of preservation of community of interest is insufficient to justify the discrimination found in the State's system of funding public education." (Tr. 591).

Local control, as it operates in Texas, does not mean control of the tax burden or quality of the educational product. As the trial court found, "[l]ocal control of school district operations in Texas has diminished dramatically in recent years, and today most of the meaningful incidents of the education process are determined and controlled by state statute and/or State Board of Education rule." (Tr. 576). Furthermore, as evidenced by this record, the reforms of H.B. 72 were not fully funded by the Legislature with the result that many poor school districts have found themselves unable to even implement the mandates of H.B. 72. Thus the irony of local control is doubly painful for those poor districts; the State requires the district to reduce its teacher ratios to 22 to 1, necessitating the hiring of new teachers and the building of additional classrooms, but does not fund these

requirements. In many instances, the poorer districts do not have an adequate tax base to implement these reforms and thus as the trial court quite reasonably concluded, "[l]ocal control is largely meaningless except as to the extent that wealthy districts are empowered to enrich their educational programs through their local property tax base, a power which is not shared equally by the State's property poor districts." (emphasis added) (Tr. 576).<sup>10</sup>

There are two constitutionally and statutorily stated purposes underlying the Texas school finance system. First, and foremost, Article VII, Section 1 of the Constitution commands the Texas Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." See Lumberton, supra. As shown in our fundamental rights analysis, the only two courts to give content to the constitutional term "efficient" have directly linked efficiency and equality. Watson, 120 S.W.2d at 942; Mumme, 40 S.W.2d at 37. Recall also the Legislature's language in creating the Gilmer-Aikin Committee: ". . . in spite of the foresight and evident intentions of the founders of our State and the framers of our

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<sup>10</sup>Equalizing the benefits and burdens of financing education can only serve to promote local control, or at least allow all districts to be playing with the same deck. A district's decision to set its tax rate at 40 cents per \$100 means completely different things in different, often neighboring, districts. If a district wants to protect its citizens from high taxes, well and good. But there is no constitutionally legitimate reason why one district's setting of a 40 cent rate should spell poverty for its schools, while for another the same rate yields swimming pools and planetariums.

State Constitution to provide equal educational advantages for all . . . ." Second, Section 16.001 of the Texas Education Code, in language clearly harking to Article VII, Section 1, expresses the State policy that "a thorough and efficient system be provided . . . so that each student . . . shall have access to programs and services . . . that are substantially equal to those available to any similar student, notwithstanding varying local economic factors."

The rational basis question that should be posed by this court is whether the Legislature, in the discharge of its constitutional obligation to "make suitable provision" for "an efficient system" of public education, or to meet the statutory goal of equality of access, may maintain a system which, tied directly to local property wealth, sponsors funding districts that are radically unequal in terms of their ability to raise necessary funds for education. Unlike the proffered local control justification, these purposes are express standards appropriate to framing the meaningful equal protection review required by Texas law.

As we demonstrate below, the Texas school finance system is not rationally related to either of the above-discussed alleged and actual purposes. The trial court made a number of fact findings which bear directly upon the rationality of the system. We summarize the more relevant:

1. Wealth disparity. "The wealthiest school district in Texas has over \$14,000,000 of property wealth per student. The

poorest district has approximately \$20,000 of property wealth per student." (Tr. 548). "[T]he 300,000 students in the lowest-wealth schools have less than 3% of the State property wealth to support their education while the 300,000 students in the highest property wealth schools have over 25% of the State's total property wealth to support their education." (Tr. 549). "[W]ealth disparity between districts is based on nothing more than the irrational accident of school district lines and in many instances wealthy and poor districts are to be found in the same county and/or are contiguous to one another." (Tr. 549).

2. Disparity in expenditures. This wealth disparity translates directly into significant disparities in expenditures per student. For example, "[t]he Texas school finance system spends an average of \$2,000 more per year on the 150,000 students . . . in the state's wealthiest districts than on the 150,000 students in the state's poorest districts": "[m]any low wealth school districts cannot afford to provide an adequate education for all their students"; and "the educational preparation of over one-third of the state's population is inadequate." (Tr. 551, 560).

3. Disparity in tax burden. Because of the wildly differing concentrations of wealth in school districts in Texas, "there are vastly differing burdens imposed upon district taxpayers to support public education." (Tr. 553). For example, the "50 poorest districts had an average tax rate of 71.96 cents (per hundred dollars of property value) and spent on average \$2,941.36 per student compared to the 50 richest districts which taxed at 37.26

cents on average and spent \$8,700.70 per student on average." (Tr. 555).

4. State aid. The F.S.P. "does not cover the real cost of education," and this "means that at least an average of \$900.00 of program costs, and all facilities costs, are totally unequalized" and "[m]ore than 200 of the State's poorest districts, which serve over 400,000 students, cannot legally raise an additional \$900 per student for programs, because to do so would require tax rates in excess of the \$1.50 statutory limit." (Tr. 565, 568). Furthermore, "[t]he failure to acknowledge the real costs of providing an adequate educational opportunity . . . has the effect of distributing more state aid to rich districts than they would otherwise receive" (Tr. 568). "Hundreds of millions of dollars" of direct State aid are sent to rich districts which could totally fund their educational programs at average tax rates. (S.F. 3009). For example, Carrollton-Farmers Branch, one of the State's wealthiest districts, still receives almost \$4,000,000 dollars in direct State aid. (S.F. 1342-43).

5. School district boundaries. "Texas, in its creation and development of school district boundaries, did not follow any rational or articulated policy . . . There is no underlying rationale in the district boundaries of many school districts in Texas and there are many districts that are pure tax havens." (Tr. 573).

6. Denial of educational opportunity. "The differences in expenditure levels found throughout the state are significant and



meaningful in terms of the educational opportunities offered to students and the effect of these differing levels of expenditures is to deprive students within the poor districts of equal educational opportunities." (Tr. 552). The "school district configurations in Texas, harboring as they do vast disparities in wealth among the districts, are neither efficient nor equitable and result in significantly different educational opportunities for children and widely varying tax burdens for taxpayers." (Tr. 601). There are "tax haven districts with very few students that shelter substantial property wealth that could and should be used as a tax base to support public education." (Tr. 601). "State monies are channeled to 'tax haven districts' either via the current funding formula or through the manner in which the State chooses to disburse monies from the Available School Fund." (Tr. 602). In addition, the State "has allowed many small districts to exist which because of diseconomies of scale are inefficient." (Tr. 602). "Regardless of size, some districts are inefficient because of lack of wealth which prevents them from providing a fully adequate educational program." (Tr. 602). Thus, "[t]he wealth disparities among school districts in Texas are extreme, and given the heavy reliance placed upon local property taxes in the funding of Texas public education, these disparities in property wealth among school districts result in extreme and intolerable disparities in the amounts expended for education between wealthy and poor districts with the result that children in the property

poor school districts suffer a denial of equal educational opportunity." (Tr. 592).

The irrationality endemic to the Texas system of school finance has also been recognized, and criticized, by every serious study of public education in Texas ever undertaken. There have been at least three major state-supported studies of school finance: (1) the Statewide School Adequacy Survey, prepared for the Texas State Board of Education in 1935; (2) the Gilmer-Aikin Committee Report of 1948; and (3) the Governor's Committee on Public School Education Report of 1968. Each of these studies found the state's system to be inefficient and inequitable.

The Texas State Board of Education in its 1935 report stated, "the school district in Texas . . . is one of the chief obstacles to equity in educational opportunities and to equality of tax burdens and to economy and efficiency in school finance." Texas State Board of Education, Texas Statewide School Adequacy Survey 93 (1935). The Gilmer-Aikin Committee in 1948 found "[o]nly one-third of the local administrative units [school districts] in Texas are large enough and strong enough to administer a modern educational program. This is no news to Texas citizens." Gilmer-Aikin Committee, To Have What We Must . . . A Digest of Proposals to Improve Public Education in Texas 22 (1948). The Gilmer-Aikin Committee recommended that the cost of facilities be included in the State's system of funding public education, contingent upon the implementation of their proposal for a reorganized State system--a proposal that to this day has not been implemented. The Gilmer-

Aikin Committee stated that "the state cannot merely allow time to take its course" Id. Further, the Committee warned that an unchanged system would allow "a highly inefficient status quo to persist to the detriment of education and to the needless expense of the taxpayers." Id.

The most recent intensive study of school district organization in Texas was performed in 1968 by Governor Connally's Committee on Public School Education, chaired by Leon Jaworski (Pl. Ex. 26). The Committee observed of the Gilmer-Aikin proposals:

A Statewide program of school district reorganization to produce "local administrative units fitted to give efficient management" was one of the "must" proposals of the Gilmer-Aikin Committee. Nearly all of the Committee's other basic program and finance recommendations were geared to this principle. When it was rejected, most of the program and finance formulas had to be redesigned.

(Pl. Ex. 26 at 20). The Connally Committee concluded that a "master plan for school district reorganization should be adopted by the Legislature of 1969" which included the basic recommendation that "every operating district should contain a minimum of 2,600 children in average daily attendance in a twelve grade system." Id. at 24. Despite these recommendations in 1968, today almost 20% of the State's 1,063 districts have fewer than 200 students in average daily attendance. There continue to be at least 95 school districts operating with fewer than twelve grades.<sup>11</sup> The effect of

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<sup>11</sup>This data is drawn from the 1986-87 Benchmark Report. (Pl. Ex. 205).

this organizational nightmare is readily apparent: "Some Texas districts can never reach optimum levels in the number of scholastics because of sparsity of population. However, many other districts in the more populous areas are undoubtedly furnishing substandard programs at the present time by choice at tremendous cost to the state and local taxpayers, simply because they are too small to be economic units, either in finance, education or both." Hankerson, Special Governmental Districts 35 Tex.L.Rev. 1004, 1005 (1957).

As the Arkansas Supreme Court held: "We find no legitimate state purpose to support the system. It bears no rational relationship to the educational needs of individual districts, rather it is determined primarily by the tax base of each district." DuPree v. Alma School District No. 30, 279 Ark. 340, 345, 651 S.W.2d 90, 93 (1983). See also Serrano I, supra (California); Horton, supra (Connecticut); Washakie, supra (Wyoming).

Texas rational basis analysis, as formulated in Sullivan, Whitworth and Stamos, requires meaningful evaluation of "whether the classifications drawn" by the State funding system "are reasonable in light of its purpose." Sullivan, 616 S.W.2d at 172. Here, we are not evaluating the means adopted to accomplish a legislatively defined goal: rather the "purpose" is found in the constitutional mandate of efficiency and suitability. The "classifications" chosen by the Legislature are really twofold. The Legislature has created and maintained school districts that

are radically unequal in funding ability and has chosen to allocate significant funding responsibilities to those districts. The classification of property school districts with heavy funding responsibilities is not reasonable "in light of" the constitutional purpose.

E. Article VII, Section 3 of the Texas Constitution Does Not Legitimate the Existing Texas System of Funding Public Education.

The Texas system of funding public education is in no way legitimated or authorized by Article VII, Section 3 of the Texas Constitution. That section merely authorizes the Legislature to create school districts and, in turn, to authorize those districts to levy ad valorem taxes. To attempt to read into the "confused mish-mash"<sup>12</sup> of Article VII, Section 3 the authorization and approval of the existing funding system is folly. The court of appeals would have us accept the rather strange notion that whenever the Constitution authorizes the Legislature to act, the courts are foreclosed from constitutional equal rights review of the product of the Legislature's actions. Such an argument would lead one to conclude that the courts could not review legislative reapportionment. See Clements v. Valles, 620 S.W.2d 112 (Tex. 1981). The contemplation, by the Constitution, of local taxing

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<sup>12</sup>The Constitution of the State of Texas: Annotated and Comparative Analysis 512 (G. Braden ed. 1977).

authorities does not contemplate, much less insulate, the existence of the vast financing differences between these districts. Article VII, Section 3, was enacted at a time when Texas was primarily rural and substantially similar geographically and economically. No framer could have envisioned the vast economic differences between these districts, much less wanted to place his imprimatur on them.

The Legislature created school districts in Texas, authorized them to tax, and allocated 50% of the funding of public education in Texas to ad valorem taxes generated from local tax bases. Inasmuch as "school districts are but subdivisions of the state government, organized for convenience in exercising the governmental function of establishing and maintaining public free schools for the benefit of the people," no amount of sophistry will permit the State to avoid judicial review of its product. Lee, 24 S.W.2d at 450.

Other state supreme courts have found that "taxing provisions," similar to our Article VII, Section 3, do not authorize a system creating widely disparate property tax bases and funding capacities. These courts have found, as we argue here, that such taxing authority does not insulate the product from equal protection review. As the Serrano II Court wrote of California's "taxing provision": the constitutional provision that "specifically authorizes local districts to levy school taxes, in no way implies that that section authorizes a system in violation of the requirements of equal protection." Serrano, 557 P.2d at

955. See also Dupree, supra (Arkansas).

II. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION DOES NOT MEET THE MANDATORY DUTY IMPOSED UPON THE LEGISLATURE BY THE TEXAS CONSTITUTION TO MAKE SUITABLE PROVISION FOR THE SUPPORT AND MAINTENANCE OF AN EFFICIENT PUBLIC SCHOOL SYSTEM.

In addition to its equal protection holding, the trial court also determined that the Texas school finance system violates the constitutional duty imposed upon the Legislature to "establish and make suitable provision for the support and maintenance of an efficient system of public free schools." Tex. Const. art. VII, §1 (emphasis added). The court of appeals held that whether the current system met the constitutional mandate of efficiency was "essentially a political question not suitable for judicial review." (Op. 13).

In so holding, the court of appeals erred. Meaning must be given the constitutional mandate. "Suitable" and "efficient" are words with meaning; they represent standards which the Legislature must meet in providing a system of public free schools. If the system falls below that standard -- if it is inefficient or not suitable -- then the Legislature has not discharged its constitutional duty and the system should be declared unconstitutional. The Constitution, no doubt, would have provided less guidance had it simply mandated that the Legislature establish and maintain any type of system of public schools. Yet the court of appeals would have us read out of the Constitution the words

"suitable" and "efficient."

Contrary to the reasoning of the court below, the Constitution itself imposes the "duty [upon] the Legislature." This Court has recently held that "Article VII, §1, of the Texas Constitution imposes a mandatory duty on our legislature to make suitable provision for the support and maintenance of an efficient public school system." Bowman v. Lumberton, I.S.D. 32 Tex.Sup.Ct.J. 104, 106 (December 7, 1988). See also Mumme, supra.

Courts are competent to make this inquiry. A brief analysis of Texas reapportionment cases is beneficial. In Clements v. Valles, 620 S.W.2d 112 (Tex. 1981), this Court declared unconstitutional the 1981 redrawing of representative districts from which members of the House are elected. Determining the boundaries of representative districts is no easy task. The Constitution imposes a mandatory duty upon the Legislature to follow county lines "as nearly as [possible]." Tex. Const. art. III, §26. Although the Constitution provided no precise guide to determine when the Legislature may "cut" county lines, the court struck the Legislature's plan and found a violation of a meaningful constitutional mandate. A similar circumstance faces this Court. Clements, additionally, reaffirms the court's competence to consider controversies traditionally considered to pose political questions. See also Baker v. Carr, 369 U.S. 186, 7 L.Ed.2d 663 (1962). While there is no tradition whatsoever suggesting that a claim under Article VII, Section 1, poses a political question, the court of appeals chose to abdicate its responsibility for just such



a reason. Inevitably, a political question argument turns on constitutional construction and perceived competency of the courts. See Tribe, supra at 107. The courts are competent to determine whether the Texas school system is the end product that our Constitution commands.

"Efficient" is generally defined as meaning "productive of desired effects; especially: productive without waste." Webster's New Collegiate Dictionary 362 (5th ed. 1977). In creating the Gilmer-Aikin Committee, the Legislature acknowledged the "evident intentions of the founders of our State and the framers of our State Constitution to provide equal educational advantages for all." Tex. H.C.Res. 48, 50th Leg. (1948). Section 16.001 of the Education Code, in language clearly harking to Article VII, Section 1, expresses the policy of the State that "a thorough and efficient system be provided . . . so that each student . . . shall have access to programs and services . . . that are substantially equal to those available to any similar student, notwithstanding varying local economic factors." Two courts have linked efficiency and equality. In Mumme, 40 S.W.2d at 37, the Court observed that "rural aid appropriations have a real relationship to the subject of equalizing educational opportunities in the State, and tend to make our system more efficient." See also Watson, 120 S.W.2d at 942. The word "suitable" also connotes equity. Cass v. State, 61 S.W.2d 500, 504 (Tex.Crim.App. 1933) ("Suitable" is synonymous with "reasonable, rational, just, honest, fair, moderate, and tolerable").

To the extent that Article VII, Section 1, connotes equality of educational opportunity, courts are surely able to pass upon whether the school finance system affords each child equal access to schooling resources. See M. Yudof, Equal Educational Opportunity and the Courts, 51 Tex. L. Rev. 411, 412-13 (1973).

One additional point concerning the language used in Article VII's constitutional mandate is significant. The Legislature must make "suitable provision for the support and maintenance of an efficient system of an efficient system of public free schools." Tex. Const. art. VII, §1 (emphasis added). "Suitable" suggests the concern of the framers of the Constitution that the state's educational system be adapted to incorporate the changing concepts of education and to meet the changing needs of our school children. See Mumme, 40 S.W.2d at 31. What was suitable in 1876 may not be suitable today.

The gross inefficiency and inequity of the current Texas school finance system, chronicled by the trial court, warrants reversal of the court of appeals' judgment.<sup>13</sup>

One commentator has noted the possible advantages of review under "efficiency" provisions:

Although many states have interpreted generally applicable bill of rights provisions to guarantee equality under the law, other provisions, not usually found in bills of

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<sup>13</sup>Our review of the record and the trial court's findings that the present system is not even rationally related to a legitimate state purpose is equally pertinent here.

rights, expressly require equality in specific and limited instances. When applicable, these provisions offer state courts sound textual bases for invalidating state actions. And at the same time they warrant extending equality guarantees beyond those of federal equal protection doctrine, these provisions allow courts to avoid some of the problems of basing decisions on generally applicable equality provisions.

R. Williams, Equality Guarantees in State Constitutional Law, 63 Tex. L. Rev. 1195, 1214 (1985).

### III. THE TEXAS SYSTEM OF FUNDING PUBLIC EDUCATION VIOLATES THE DUE COURSE OF THE LAW PROVISION OF TEXAS CONSTITUTION.

Even while singing the praises of local control over education, state officials have thrust increasingly heavy financial burdens upon local school districts. See, e.g., Tex. Educ. Code Ann. §§21.101 (required curriculum); 21.103 (required tutorial services); 21.652 (required programs for the gifted and talented). Wealthy districts have little trouble meeting these obligations; but for poorer districts, such state-imposed mandates have required substantial increases in property tax rates. The differing burdens thus imposed by the State are of constitutional significance in two respects.

First, the disproportionate burdens imposed on poorer districts constitute deprivations of property without due course of law, in violation of Article I, Section 19 of the Texas Constitution. A poor-district property owner pays more for a state-imposed educational obligation than does a wealthy-district

resident who owns property of equal value. This disparity is both arbitrary and unreasonable, and thus deprives the poor-district property owner of the substantive due process to which he is entitled. See, e.g., Weatherly I.S.D. v. Hughes, 41 S.W.2d 445 (Tex.Civ.App.--Amarillo 1931, no writ), cited with approval, Bernhardt v. Port Arthur I.S.D., 324 S.W.2d 163 (Tex. 1959).

Second, the disparate burdens imposed by the State fly in the face of the constitutional mandate that taxation "shall be equal and uniform." Tex. Const. Art. VIII, §1. Looking from district to district, one finds tax burdens of striking inequality and non-uniformity. This circumstance is not only unfair; it is, even if unintended, clearly violative of Article VIII, Section 1. See Hunt v. Throckmorton I.S.D., 59 S.W.2d 470, 472 (Tex.Civ.App.--Eastland 1933, no writ).

#### IV. PETITIONERS ARE ENTITLED TO RECOVERY OF ATTORNEY'S FEES.

The trial court denied recovery of attorney's fees to petitioners on the ground that such recovery was barred by the doctrine of sovereign immunity. This court, however, recently concluded that sovereign immunity is no bar to recovery of attorney's fees in appropriate cases. In T.S.E.U., supra, this court awarded attorney's fees to the plaintiffs on the basis of Sections 104.001 and 104.002(2) of the Texas Civil Practice and Remedies Code. Those provisions, by their clear terms, allow recovery of attorney's fees against the state in an action based

on deprivation of constitutional rights.

CONCLUSION AND PRAYER FOR RELIEF

For the reasons stated in this application, petitioner-intervenors request that this Court reverse the judgment of the court of appeals and affirm the judgment of the trial court in all particulars, except as to the trial court's denial of attorney's fees. Petitioner-intervenors further pray for all other relief to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Application for Writ of Error (and Appendix thereto) of Petitioner-Intervenors Alvarado I.S.D., et al., has been sent on this \_\_\_\_ day of February, 1989, by United States Mail, postage prepaid to all counsel of record.

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DAVID R. RICHARDS

FILED  
IN SUPREME COURT  
OF TEXAS

FEB 10 1989

C 8353

NO.

MARY M. WAKEFIELD, Clerk

By \_\_\_\_\_ Deputy

IN THE  
SUPREME COURT OF TEXAS

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

Petitioners

V.

WILLIAM KIRBY, ET AL.,

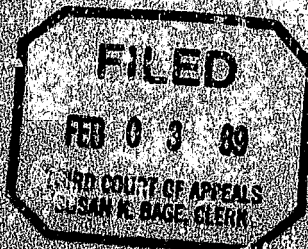
Respondents

APPENDIX TO PETITIONER-INTERVENORS'  
APPLICATION FOR WRIT OF ERROR

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SCHOOL DISTRICT, ET AL.



NO. \_\_\_\_\_

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IN THE  
SUPREME COURT OF TEXAS

---

EDGEWOOD INDEPENDENT SCHOOL DISTRICT, ET AL.,

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APPENDIX TO PETITIONER-INTERVENORS'  
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SCHOOL DISTRICT, ET AL.



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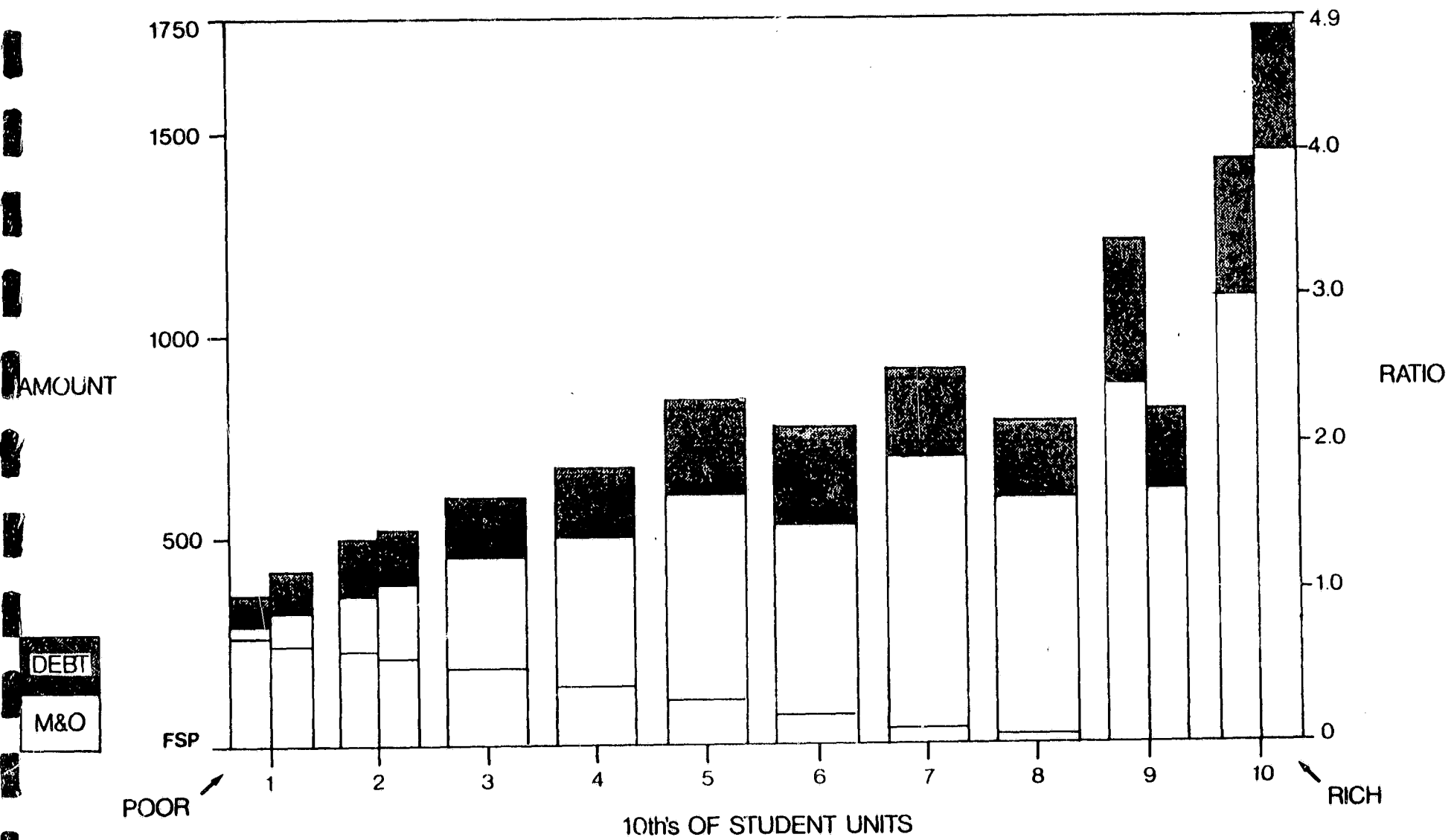
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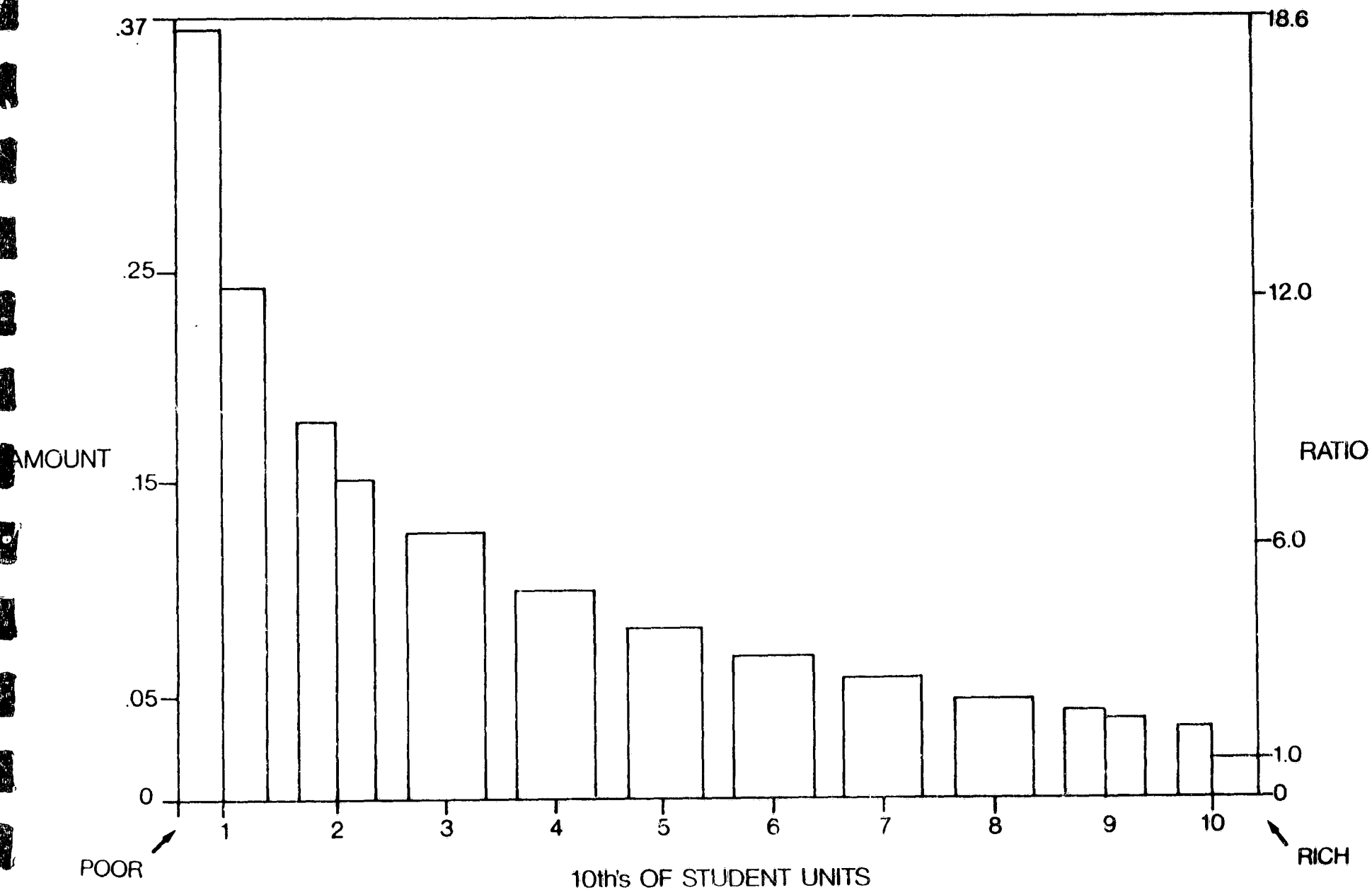


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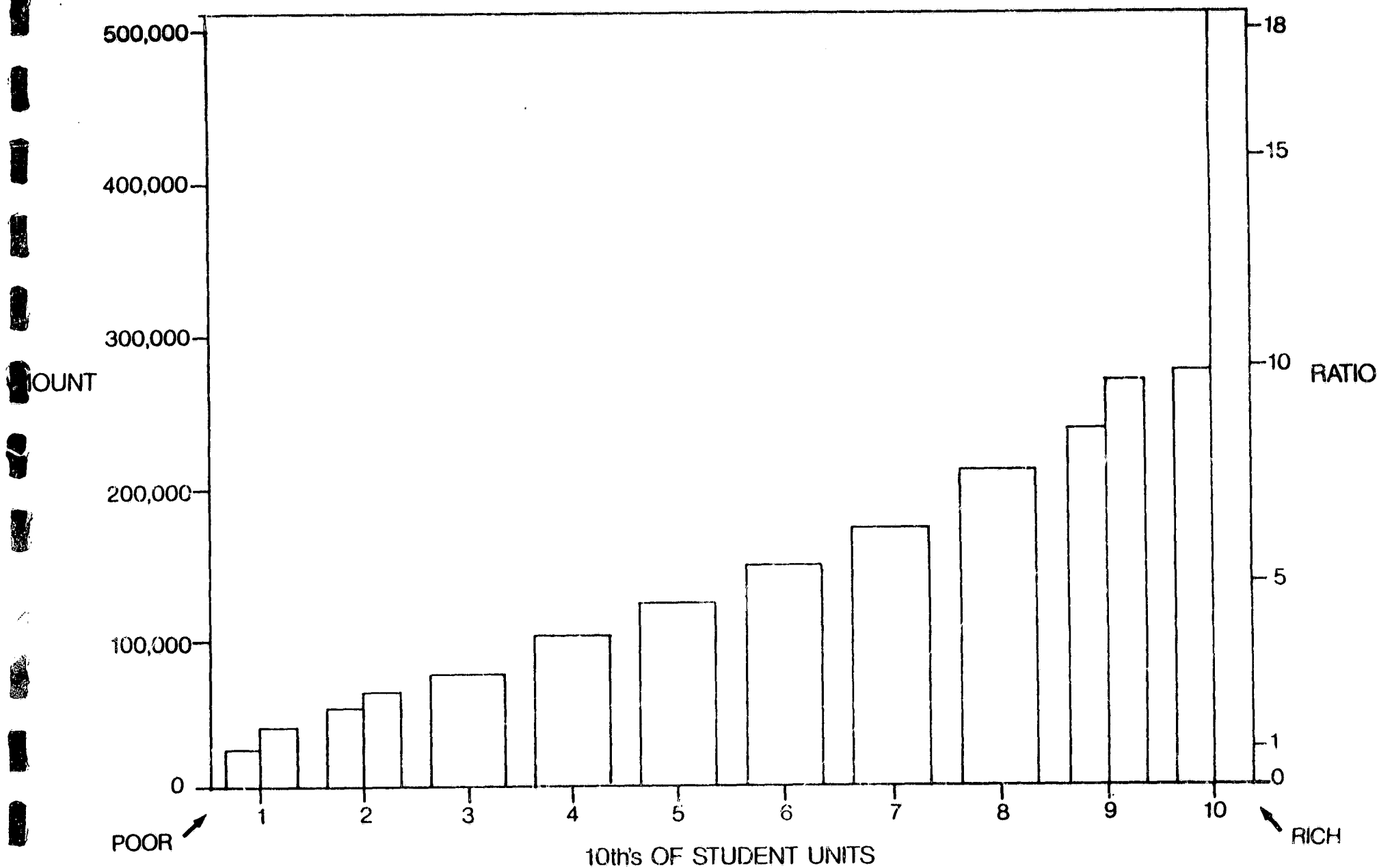
# EXPENDITURES PER STUDENT UNIT ABOVE FSP, BY WEALTH GROUP



# TAX RATE TO RAISE \$100 PER STUDENT UNIT, BY WEALTH GROUP



# WEALTH: TAXABLE VALUE PER STUDENT UNIT



### EXPLANATORY STATEMENT

The following material is a compilation of data drawn from three exhibits before the Court:

1. Pl. Ex. 1--An atlas of Texas public school districts.
2. Pl. Ex. 105(c)--Expenditures per student by district name.
3. Pl. Int. Ex. 205--Benchmarks for 1986-87 school district budgets.

As reflected by the State map on the next page, the counties are distributed across the State. The individual county maps reflect the configuration of the school district, together with certain relevant data as follows:

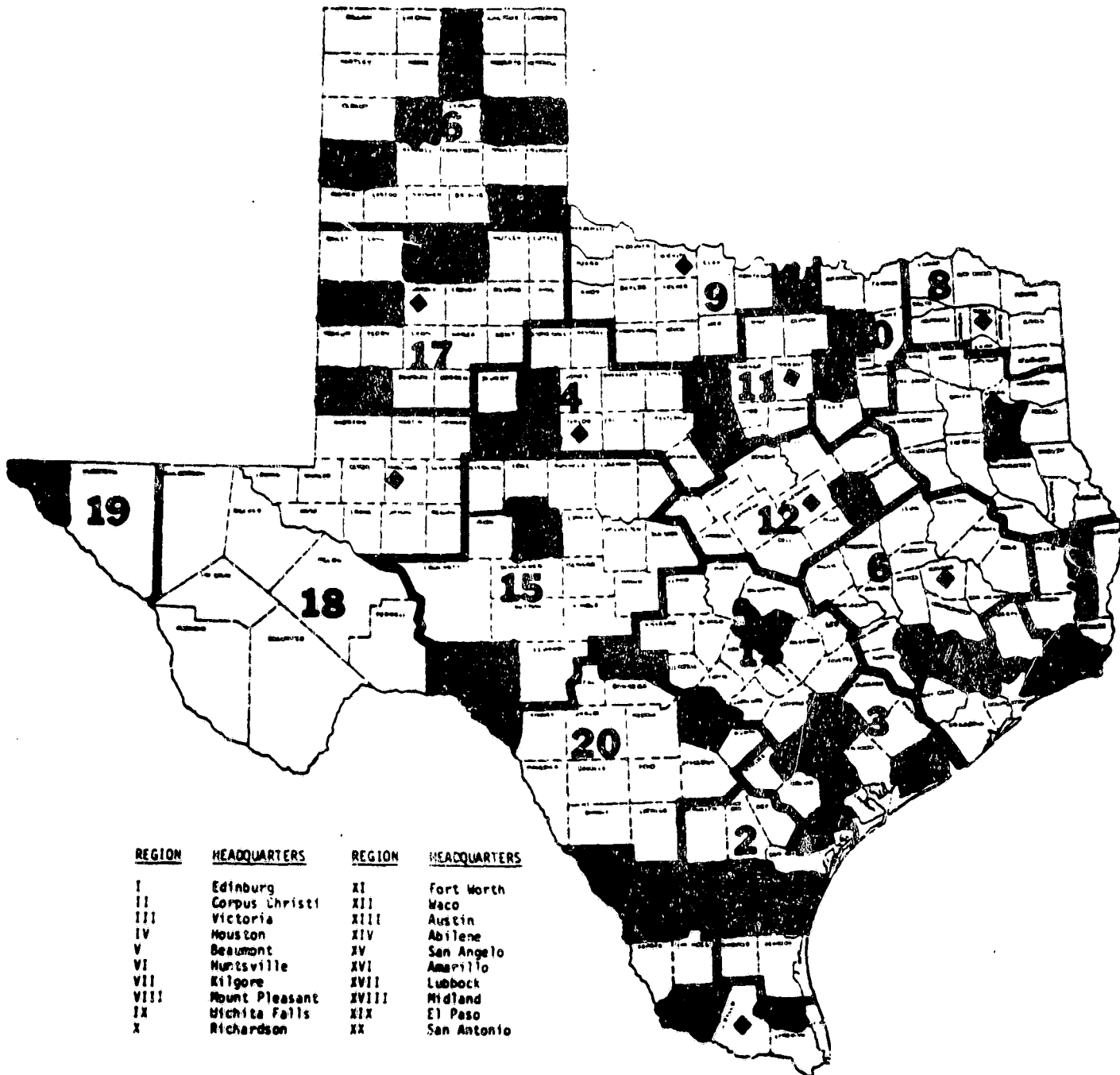
1. Number of students in average daily attendance.
2. District property wealth per student.
3. The district's expenditure per student.
4. The district's tax rate per \$100.00 valuation.

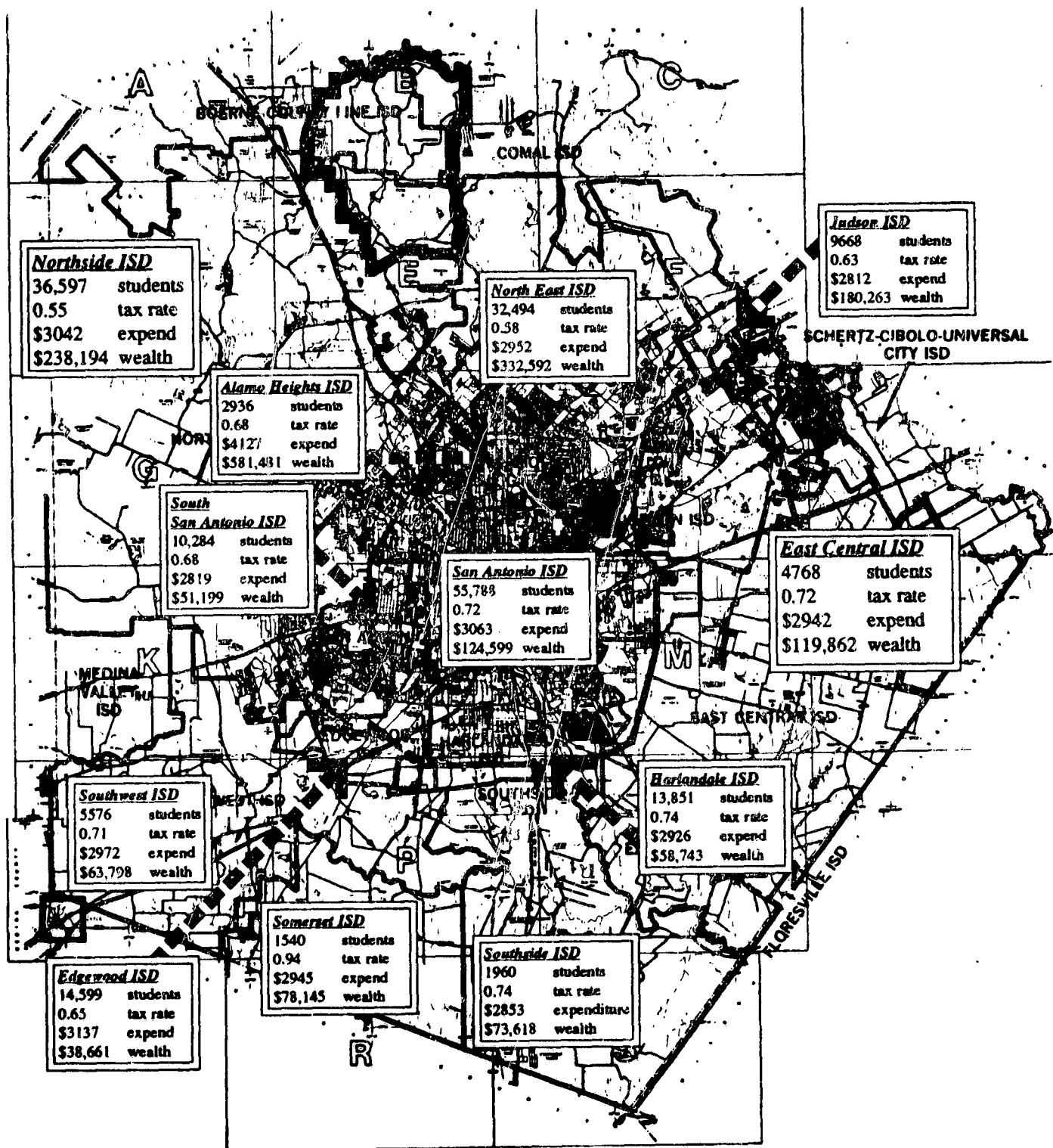
The \*\*\* indicate that the district does not maintain a twelve grade system.

One purpose of the maps is to show the varying expenditures, tax rates and wealth of school districts within the same county. In several instances counties were combined because of substantial overlap.

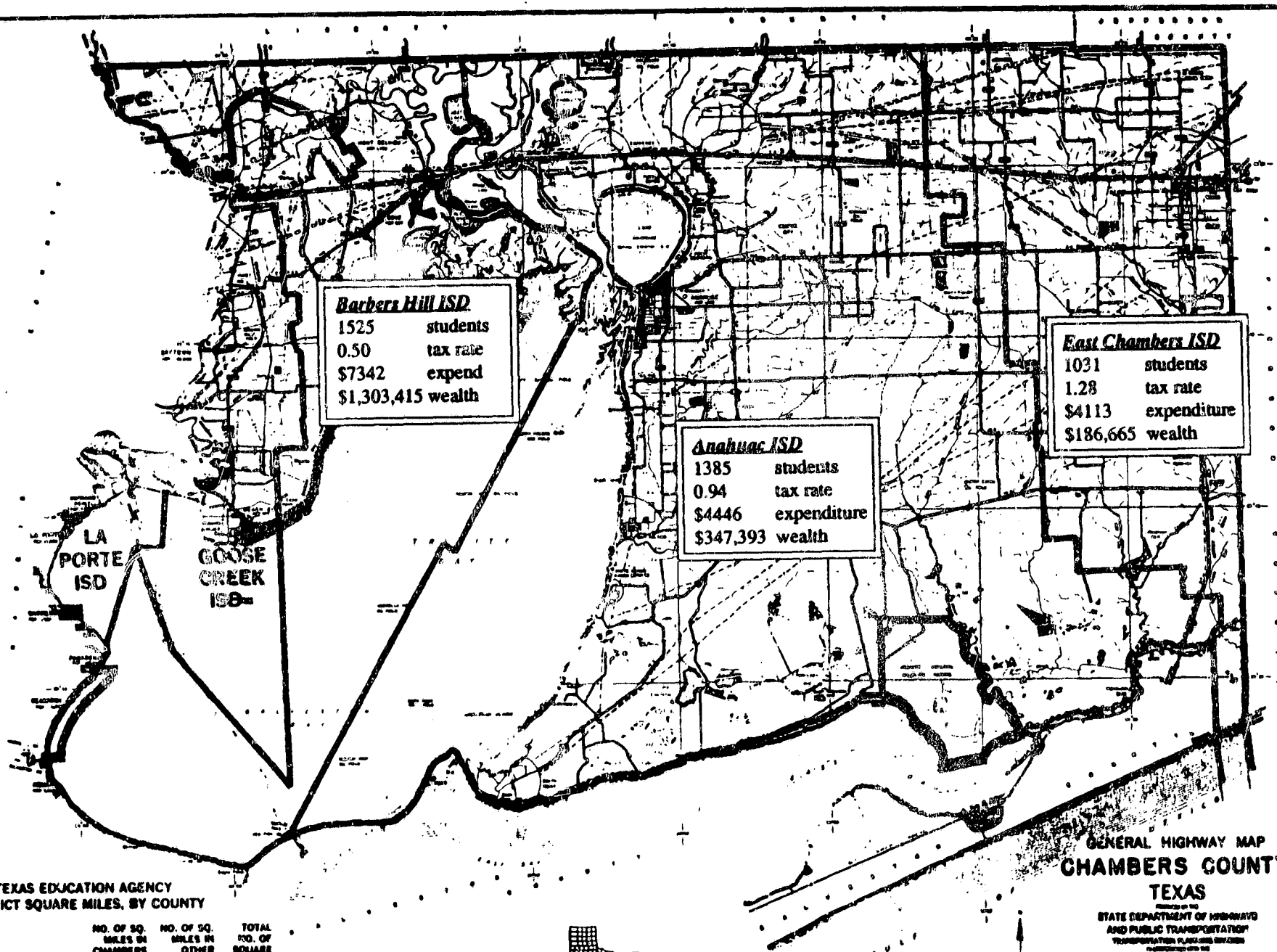
# GEOGRAPHIC DISTRIBUTION OF COUNTIES DEPICTED IN APPENDIX

(IN BLACK)



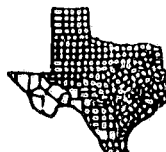


# Bexar County



TEXAS EDUCATION AGENCY  
 DISTRICT SQUARE MILES, BY COUNTY

COUNTY	DISTRICT	DISTRICT NAME	NO. OF SQ. MILES IN CHAMBERS COUNTY	NO. OF SQ. MILES IN OTHER COUNTIES	TOTAL NO. OF SQUARE MILES
036	036001	CHAMBERS COUNTY	444	0	444
036001	036001	ANAHUAC ISD	211	0	211
036002	036002	BARBERS HILL ISD	159	0	159
036003	036003	EAST CHAMBERS ISD	96	83	179
101911	101911	GOOSE CREEK ISD	11	45	56
101916	101916	LA PORTE ISD	001		
		COUNTY TOTAL			



GENERAL HIGHWAY MAP  
 CHAMBERS COUNTY  
 TEXAS

DESIGNED BY  
 STATE DEPARTMENT OF HIGHWAYS  
 AND PUBLIC TRANSPORTATION  
 TRANSPORTATION PLANNING DIVISION  
 U.S. DEPARTMENT OF TRANSPORTATION  
 FEDERAL HIGHWAY ADMINISTRATION

1971

CHAMBERS COUNTY



**Melissa ISD**

231 students  
1.06 tax rate  
\$4094 expenditure  
\$183,126 wealth  
\*\*\*\*\*

**Westminster ISD**

120 students  
0.89 tax rate  
\$2984 expenditure  
\$88,200 wealth

**White Wright ISD****Trenton ISD**
**TEXAS EDUCATION AGENCY  
DISTRICT SQUARE MILES, BY COUNTY**

COUNTY	DISTRICT	NO. OF SQ. MILES IN COLLIN COUNTY	NO. OF SQ. MILES IN OTHER COUNTIES	TOTAL NO. OF SQUARE MILES
041	COR 1 IN COUNTY	23	0	23
043001	ALLEN ISD	41	0	41
043002	ANNA ISD	85	0	85
043003	CELINA ISD	49	0	49
043004	FARMERSVILLE ISD	115	0	115
043005	FRESNO ISD	67	0	67
043006	MCINNEY ISD	100	0	100
043010	PLANO ISD	62	0	62
043011	PRINCETON ISD	46	6	52
043012	PROSPER ISD	29	0	29
043013	WESTMINSTER ISD	42	0	42
043014	WYLIE ISD	60	1	61
043017	BLUE RIDGE ISD	30	2	32
043018	COMMUNITY ISD	18	0	18
043019	LOVEJOY ISD	8	60	68
074005	LEONARD ISD	2	47	49
074012	TRENTON ISD	10	59	69
091000	VAN ALSTYNE ISD	1	76	77
091010	WHITEWRIGHT ISD	1	60	61
091017	QUINTER ISD	7	54	61
116015	BLAND ISD	10	67	77
199002	ROYSE CITY ISD			
	COUNTY TOTAL	867		

**Celina ISD**

564 students  
0.49 tax rate  
\$2897 expenditure  
\$193,734 wealth

**Anna ISD**

457 students  
0.66 tax rate  
\$3237 expenditure  
\$93,331 wealth

**Blue Ridge ISD**

376 students  
0.58 tax rate  
\$2677 expenditure  
\$107,973 wealth

**Prosper ISD**

358 students  
0.82 tax rate  
\$4774 expend  
\$350,709 wealth

**McKinney ISD**

3932 students  
0.81 tax rate  
\$3603 expenditure  
\$243,196 wealth

**Farmersville ISD**

887 students  
0.58 tax rate  
\$2895 expenditure  
\$104,812 wealth

**Fresno ISD**

1101 students  
0.52 tax rate  
\$3674 expend  
\$491,009 wealth

**Princeton ISD**

1388 students  
0.87 tax rate  
\$3022 expend  
\$83,751 wealth

**Plano ISD**

25,021 students  
0.76 tax rate  
\$3933 expenditure  
\$379,841 wealth

**Community ISD**

695 students  
0.61 tax rate  
\$2998 expenditure  
\$92,694 wealth

**Wylie ISD**

1693 students  
0.69 tax rate  
\$3770 expend  
\$179,454 wealth

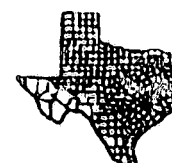
**Allen ISD**

2986 students  
0.85 tax rate  
\$3607 expend  
\$221,649 wealth

**Lovejoy ISD**

320 students  
0.83 tax rate  
\$5021 expenditure  
\$504,000 wealth  
\*\*\*\*\*

\*\*\*\*\* District does not offer all 12 grades


**GENERAL HIGHWAY MAP  
COLLIN COUNTY  
TEXAS**

STATE DEPARTMENT OF HIGHWAYS  
AND PUBLIC TRANSPORTATION  
FEDERAL HIGHWAY PLANNING DIVISION  
U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

1970

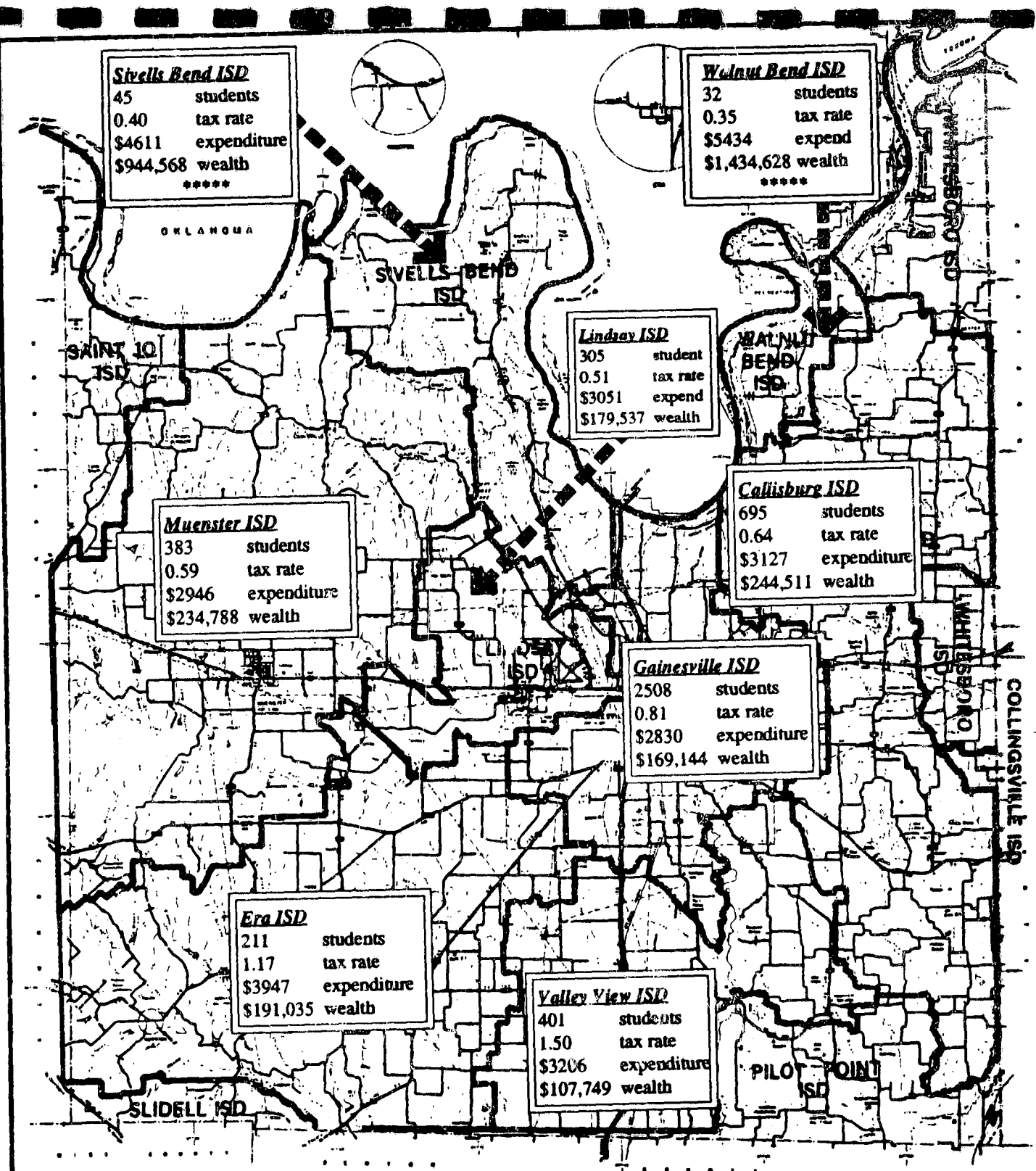
REVISIONS TO JUNE 1, 1970

REVISIONS TO JUNE 1, 1970

REVISIONS TO JUNE 1, 1970

REVISIONS TO JUNE 1, 1970

COLLIN COUNTY TEXAS



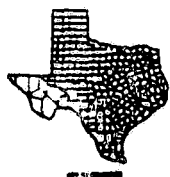
GENERAL HIGHWAY MAP  
COOKE COUNTY  
TEXAS

STATE DEPARTMENT OF HIGHWAYS  
AND PUBLIC TRANSPORTATION  
TRANSPORTATION PLANNING DIVISION  
IN COOPERATION WITH THE  
U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION

1963  
NOT TO SCALE

LEGEND

COOKE COUNTY TEXAS

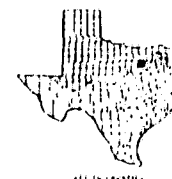


TEXAS EDUCATION AGENCY  
DISTRICT SQUARE MILES, BY COUNTY

COUNTY DISTRICT NO.	DISTRICT NAME	NO. OF SQ. MILES IN COOKE COUNTY	NO. OF SQ. MILES IN OTHER COUNTIES	TOTAL NO. OF SQUARE MILES
049	COOKE COUNTY			
049801	GAINEVILLE ISD	78	0	78
049802	MUENSTER ISD	189	0	189
049803	VALLEY VIEW ISD	84	0	84
049805	CALLISBURG ISD	139	0	139
049806	ERA ISD	152	1	153
049807	LINDSAY ISD	40	0	40
049808	WALNUT BEND ISD	20	0	20
049809	SIVEL'S BEND ISD	74	0	74
081803	PILOT POINT ISD	24	91	115
091802	COLLINGSVILLE ISD	2	91	93
091809	WHITEBORO ISD	46	110	156
108911	SAINT JO ISD	34	124	158
249808	SLIDELL ISD	10	112	122
	COUNTY TOTAL	804		

# TEXAS EDUCATION AGENCY DISTRICT SQUARE MILES, BY COUNTY

COUNTY	DISTRICT NAME	NO. OF SQ. MILES IN DALLAS COUNTY	NO. OF SQ. MILES IN OTHER COUNTIES	TOTAL NO. OF SQUARE MILES
DISTRICT NO.	DALLAS COUNTY			
057	CARRINGTON			
057003	FARMERS BRANCH ISD	40	9	49
057004	CEDAR HILL ISD	12	0	12
057005	DALLAS ISD	319	0	319
057006	DE SOTO ISD	22	0	22
057007	DUFF AIRVILLE ISD	29	0	29
057009	GAIN AND ISD	96	0	96
057010	GRAND PRAIRIE ISD	53	0	53
057011	HIGH AND PARK ISD	7	0	7
057012	IRVING ISD	51	0	51
057013	LANCASTER ISD	38	0	38
057014	MESQUITE ISD	55	0	55
057016	RICHARDSON ISD	44	0	44
057019	SUNNYVALE ISD	20	0	20
057020	WILM. H. HUTCHINS ISD	70	0	70
057022	COMPTON ISD	24	0	24
070005	FERRIS ISD	4	75	79
220006	GRAPEVINE ISD	1	53	53
	COUNTY TOTAL	907		



## GENERAL HIGHWAY MAP DALLAS COUNTY TEXAS

PREPARED BY THE  
STATE DEPARTMENT OF HIGHWAYS  
AND PUBLIC TRANSPORTATION  
TRANSPORTATION PLANNING DIVISION  
IN COOPERATION WITH THE  
U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION



1973

1970 LEGEND FIGURE  
REVISIONS: REVISED TO APRIL 1, 1970

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